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STATUTES

OF THE

TERRITORY OF WISCONSIN,

PASSED BY THE LEGISLATIVE ASSEMBLY THEREOF, AT A
SESSION COMMENCING IN NOVEMBER 1838, AND AT
AN ADJOURNED SESSION COMMENCING
IN JANUARY, 1839.



PUBLISHED BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY.

State Historical Society
OF WISCONSIN.
MADISON, - WIS.

ALBANY, N. Y.

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1839.

State Historical Society
OF WISCONSIN.

MADISON, - WIS.

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OF WISCONSIN.**

MADISON, - WIS.

ADVERTISEMENT.

By a resolution which passed the Legislative Assembly, in December last, a committee was appointed to revise the laws of the Territory, and report the result of their labors at an adjourned session. This committee consisted of Messrs. Morgan L. Martin, Marshall M. Strong and James Collins, of the Council, and Messrs. Edward V. Whiton, B. Shackelford and Augustus Story, of the House of Representatives. The committee, during the recess of the Legislative Assembly, (which continued only for a period of about thirty days,) prepared, and, at the session which succeeded, reported, numerous bills, which, after being amended by the Legislative Assembly, were passed by that body, and compose the principal part of the laws contained in this volume.

By an act which passed the Legislative Assembly, on the eleventh day of March last, the subscriber was directed to procure the laws which appear in this volume to be printed, and to accompany them with full marginal notes, and an index. In obedience to that direction this volume has been prepared.

The index is not as copious as the subscriber wished or intended, but he did not feel at liberty to delay the publication of the work, beyond the time when the laws are to take effect, for the purpose of making it more perfect; had longer time been allowed, it would have been prepared in a manner more satisfactory to him, and undoubtedly more acceptable to the public.

Owing to the great pressure of business, at the session during which the laws composing this volume were passed, and the impossibility of procuring a sufficient number of competent clerks to enrol the bills, many mistakes appear in the acts on file in the secretary's office, though they are generally of such a nature as not materially to alter the sense of the passages in which they occur; some of these mistakes the subscriber has attempted to remedy in the following manner:

Where a superfluous word has been found in the enrolled bill, it has been printed in the text, but in italics, and enclosed in a parenthesis, (*thus.*) Where a word has been found necessary to sustain the sense of the context, or where one word has been obviously mistaken for another, the word supposed to be proper has been supplied, but in brackets, [thus;] and in no case has the text of the enrolled bill been altered.

EDWARD V. WHITON.

June, 1839.

CERTIFICATE.

I hereby certify, that the laws contained in this volume, purporting to be Statutes of the Territory of Wisconsin, are true copies of the Statute Laws on file in the office of the Secretary of said Territory.

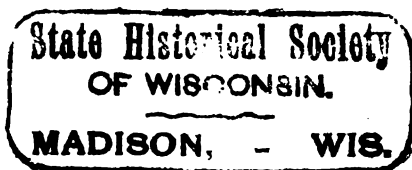
EDWARD V. WHITON.

STATE OF NEW-YORK, }
Albany City and County, } ss.

June 15, 1839.

Then the above named Edward V. Whiton personally appeared, and made oath that the above certificate by him subscribed is true, before me.

THOMAS M. BURT,
Commissioner of Deeds.



CONSTITUTION OF THE UNITED STATES.

WE, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE 1.

SECTION 1.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives. Legislative powers.

SECTION 2.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. House of representatives; its members; by whom chosen.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen. Qualifications of representatives.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New-Hampshire shall be entitled to choose three; Massachusetts eight; Rhode-Island and Providence Plantations one; Connecticut five; New-York six; New-Jersey four; Pennsylvania eight; Delaware one; Maryland six; Virginia ten; North-Carolina five; South-Carolina five; and Georgia three. Representatives and taxes to be apportioned according to numbers. Actual enumeration every ten years. Limitation of the ratio of representation, &c. First apportionment of representatives.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies. Vacancies how filled.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment. Powers of the House.

SECTION 3.

Senators
how chosen.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

The senate
divided into
three classes.

When vacated
and filled.

Vacancies.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Qualifications
of senators.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

President of
the senate.

4. The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

Id and other
officers.

5. The senate shall choose their other officers and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The sole
power to try
impeachments
in the senate, &c.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present.

Extent of
judgment in
cases of im-
peachment.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4.

Elections for
senators and
representatives,
how regulated.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Meetings of
congress.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

Each house
judge of the
election of
its own mem-
bers.

Quorum.

To deter-
mine its own
rules, &c.

1. Each house shall be the judge of the elections, returns, and qualifications, of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one-fifth of those present, be entered on the journal. To keep and publish journals, &c.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. Adjournment.

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place. Senators and representatives to be paid, &c. Privileges.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office. Disability to hold offices.

SECTION 7.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills. Revenue bills.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law. The forms of proceeding on bills.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill. It, on joint resolutions, except for adjournment.

CONSTITUTION OF

SECTION 8.

Congress
have power
to lay taxes,
&c.

The congress shall have power,

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:
2. To borrow money on the credit of the United States:
3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:
4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:
5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:
6. To provide for the punishment of counterfeiting the securities and current coin of the United States:
7. To establish post-offices and post-roads:
8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:
9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:
10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:
11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years:
12. To provide and maintain a navy:
13. To make rules for the government and regulation of the land and naval forces:
14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:
15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress:
16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: and,
17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION 9.

Importation
of certain
persons not
to be prohi-
bited until
after 1808.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight,

but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it. Writ of habeas corpus.

3. No bill of attainder, or *ex post facto* law shall be passed. Bills of attainder, &c.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken. Direct taxes.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another. No export duty, nor preference of one state to another. &c.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time. Money to be expended by legal appropriation only.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state. Titles of nobility, &c.

SECTION 10.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility. Powers forbidden to the states individually.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. Powers which the states can exercise only under the sanction of congress.

ARTICLE 2.

SECTION 1.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows: Executive power vested in a president, &c.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. Electors of president and vice-president, &c.

Meeting of
the electors
of president,
&c.

Their pro-
ceedings.

[3. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president.*]

[*Annulled.
See amend-
ments, art.
12.]

Time of
choosing
electors.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Qualifica-
tions of the
president.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of
vacancy in
the office of
president,
the vice-pres-
ident to act,
&c.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

Compensa-
tion of the
president.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

The presi-
dent to take
an oath.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

SECTION 2.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

Powers of the president.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3.

1. He shall, from time to time give to the congress information of the state of the union, and recommend to their consideration, such measures as he shall judge necessary and expedient: he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

Other duties and powers.

SECTION 4.

1. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Officers liable to impeachment.

ARTICLE 3.

SECTION 1.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Judicial power.

Judges to hold their offices during good behavior, &c.

SECTION 2.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all

Extent of the judicial power.

cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

Original and appellate jurisdiction of the supreme court.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

Trial of crimes to be by jury, &c.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3.

Definition of treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Congress to declare its punishment.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE 4.

SECTION 1.

Credit in one state to the public acts, &c. of another.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings, shall be proved, and the effect thereof.

SECTION 2.

Reciprocity of citizens.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Criminals flying from one state to another, to be delivered up on demand.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Runaways to be delivered up.

3. No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3.

New states may be admitted into

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of

any other state, nor any state to be formed by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress. the union, &c.

2. The congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state. Congress to have power over territory, &c.

SECTION 4.

1. The United States shall guaranty to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature can not be convened) against domestic violence. Republican form of government guaranteed to each state &c.

ARTICLE 5.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no state, without its consent, shall be deprived of its equal suffrage in the senate. Mode of amending this constitution.

ARTICLE 6.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation. Assumption of former debts.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding. This constitution, &c. the supreme law: the state judges bound thereby.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States. Certain officers to take oath to support constitution. No religious test.

ARTICLE 7.

1. The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same. Ratification.

CONSTITUTION OF

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and deputy from Virginia.

NEW-HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

William Samuel Johnson,
Roger Sherman.

NEW-YORK.

Alexander Hamilton.

NEW-JERSEY.

William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.

PENNSYLVANIA.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

Attest,

DELAWARE.

George Read,
Gunning Bedford, jun.
John Dickinson,
Richard Bassett,
Jacob Broom.

MARYLAND.

James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

VIRGINIA.

John Blair,
James Madison, jun.

NORTH-CAROLINA.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

SOUTH-CAROLINA.

John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abraham Baldwin.

WILLIAM JACKSON, Secretary.

[The following extract from the journals of congress, shows the adoption of the constitution, and the time when it took effect.]

IN CONGRESS,

SATURDAY, SEPTEMBER 13, 1788.

On the question to agree to the following proposition, it was resolved in the affirmative by the unanimous votes of nine states, viz. of New-Hampshire, Massachusetts, Connecticut, New-York, New-Jersey, Pennsylvania, Virginia, South-Carolina, and Georgia.

The constitution declared to be ratified.

Whereas the convention assembled in Philadelphia, pursuant to the resolution of congress of the 21st February, 1787, did, on the 17th of September in the same year, report to the United States in congress assembled, a constitution for the people of the United States; whereupon congress on the 28th of the same September, did resolve unanimously, "that the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each state by

the people thereof, in conformity to the resolves of the convention made and provided in that case:" and whereas the constitution so reported by the convention, and by congress transmitted to the several legislatures, has been ratified in the manner therein declared to be sufficient for the establishment of the same, and such ratifications duly authenticated have been received by congress, and are filed in the office of the secretary; therefore,

Resolved, That the first Wednesday in January next be the day for appointing electors in the several states, which before the said day shall have ratified the said constitution; that the first Wednesday in February next, be the day for the electors to assemble in their respective states, and vote for a president; and that the first Wednesday in March next, be the time, and the present seat of congress the place, for commencing proceedings under the said constitution.

Federal government to go into operation on the 4th of March, 1789.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

[The following amendments were proposed at the first session of the first congress of the United States, which was begun and held at the city of New-York, on the 4th of March, 1789, and were adopted by the requisite number of states. 1 vol. laws U. S. p. 72.]

[The following preamble and resolution preceded the original proposition of the amendments, and as they have been supposed by a high equity judge, (8th Wendell's Reports, p. 100,) to have an important bearing on the construction of those amendments, they are here inserted. They will be found in the journals of the first session of the first congress.

CONGRESS OF THE UNITED STATES,

Began and held at the city of New-York on Wednesday the 4th of March, 1789.

The conventions of a number of the states having, at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the government, will best insure the beneficent ends of its institution,

Resolved, By the senate and house of representatives of the United States of America in congress assembled, two-thirds of both houses concurring, that the following articles be proposed to the legislatures of the several states, as amendments to the constitution of the United States; all or any of which articles, when ratified by three-fourths of the said legislatures, to be valid to all intents and purposes, as part of the said constitution, namely:]

ARTICLE 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Restrictions on the powers of congress.

ARTICLE 2.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Right of the people to keep arms, &c.

ARTICLE 3.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Quartering of soldiers, &c.

ARTICLE 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause,

Search warrants, &c.

supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE 5.

Proceedings
against persons
charged with
crimes.

Their rights.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE 6.

Further
rights.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE 7.

Right of trial
by jury.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE 8.

Excessive
bail, &c.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE 9.

Construc-
tion of con-
stitution.

The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE 10.

Powers re-
served to the
States.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

[The following amendment was proposed at the second session of the third congress. It is printed in the laws of the United States, 1st vol. p. 73, as article 11.]

ARTICLE 11.

Restriction
of judicial
powers.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

[The three following sections were proposed as amendments at the first session of the eighth congress.

They are printed in the laws of the United States as ARTICLE TWELVE.]

ARTICLE 12.

Mode of
electing the
president

1. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall

not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

and vice-president of the United States.

President.

2. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president: a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

Vice-president

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

[In the edition of the laws of the U. S. before referred to, there is an amendment printed as article 13, prohibiting citizens from accepting titles of nobility or honor, or presents, offices, &c. from foreign nations. But, by a message of the president of the United States of the 4th of February, 1818, in answer to a resolution of the house of representatives, it appears that this amendment had been ratified only by 12 states, and therefore had not been adopted. See vol. iv. of the printed papers of the 1st session of the 15th congress, No. 76.]

ACTS OF CONGRESS.

AN ORDINANCE

For the government of the Territory of the United States northwest of the river Ohio.

District.

Be it ordained by the United States in congress assembled, That the said territory, for the purposes of temporary government, be one district, subject however, to be divided into two districts, as future circumstances may in the opinion of congress make it expedient.

Rules of inheritance.

Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory dying intestate, shall descend to and be distributed among their children and the descendants of a deceased child in equal parts; the descendants of a deceased child or grand-child to take a share of their deceased parent in equal parts among them, and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have in equal parts among them their deceased parents share, and there shall in no case be a distinction between kindred of the whole and half blood, saving in all cases to the widow of the intestate her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descendants and dower shall remain in full force until altered by the legislature of the district, and until the governor and judges shall adopt laws, as hereinafter mentioned; estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release or bargain and sale, signed, sealed and delivered by the person being of full age, in whom the estate may be, and attested by two witnesses; provided such wills be duly proved, such conveyances be acknowledged or the execution thereof duly proved, and be recorded within one year, after proper magistrates, courts and registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving however to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Personal property.

Governor.

Be it ordained by the authority aforesaid, That there shall be appointed from time to time by congress a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

There shall be appointed from time to time by congress a secreta-
 ry, whose commission shall continue in force for four years, unless
 sooner revoked; he shall reside in the district and have a freehold
 estate therein in five hundred acres of land, while in the exercise of
 his office; it shall be his duty to keep and preserve the acts and laws
 passed by the legislature, and the public records of the district, and
 the proceedings of the governor in his executive department, and
 transmit authentic copies of such acts and proceedings every six
 months to the secretary of congress. There shall also be appointed
 a court, to consist of three judges, any two of whom to form a court,
 who shall have a common law jurisdiction, and reside in the district,
 and have each therein a freehold estate in five hundred acres of land,
 while in the exercise of their offices, and their commissions shall con-
 tinue in force during good behavior.

Secretary.

Supreme
court.

The governor and judges, or a majority of them, shall adopt and
 publish in the district such laws of the original states, criminal and
 civil, as may be necessary and best suited to the circumstances of the
 district, and report them to congress from time to time, which laws
 shall be in force in the district until the organization of the general
 assembly therein, unless disapproved of by congress; but afterwards
 the legislature shall have authority to alter them as they shall think
 fit.

Legislature.

The governor for the time being shall be commander-in-chief of
 the militia, appoint and commission all officers in the same, below the
 rank of general officers; all general officers shall be appointed and
 commissioned by congress.

Officers of
militia.

Previous to the organization of the general assembly the governor
 shall appoint such magistrates and other civil officers, in each county
 or township, as he shall find necessary for the preservation of peace
 and good order in the same. After the general assembly shall
 be organized, the powers and duties of the magistrates and other ci-
 vil officers shall be regulated and defined by the said assembly; but
 all magistrates and other civil officers, not herein otherwise directed
 shall, during the continuance of this temporary government, be ap-
 pointed by the governor.

Civil officers.

For the prevention of crimes and injuries, the laws to be adopted
 or made, shall have force, in all parts of the district, and for the ex-
 ecution of process, criminal and civil, the governor shall make proper
 divisions thereof; and he shall proceed from time to time, as circum-
 stances may require, to lay out the parts of the district in which the
 Indian titles shall have been extinguished, into counties and town-
 ships, subject, however, to such alterations as may thereafter be made
 by the legislature.

Civil divi-
sions of the
districts.

So soon as there shall be five thousand free male inhabitants of
 full age, in the district, upon giving proof thereof to the governor,
 they shall receive authority, with time and place, to elect representa-
 tives from their counties, or townships, to represent them in the gen-
 eral assembly: *Provided*, That for every five hundred free male in-
 habitants there shall be one representative, and so on progressively
 with the number of free male inhabitants shall the right of represen-
 tation increase, until the number of representatives shall amount to
 twenty-five, after which, the number and proportion of representa-
 tives shall be regulated by the legislature: *Provided*, That no per-

Representa-
tive govern-
ment; gene-
ral assem-
bly.

son be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold, in his own right, in fee simple, two hundred acres of land within the same: *Provided also*, That a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold, and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

Term of service; vacancies how filled.

The representative thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

Constitution of the legislative power.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by congress; any three of whom to be a quorum. And the members of the council shall be nominated and appointed in the following manner, to wit: as soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to congress; five of whom congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to congress; one of whom congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of the council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to congress; five of whom congress shall appoint and commission, to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives shall have authority to make laws, in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared.

Vacancies, how filled.

Governor's assent to bills.

And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent, but no bill or legislative act whatever shall be of any force without his assent. The governor shall have power to convene, prorogue and dissolve the general assembly, when in his opinion it shall be expedient.

Oath of fidelity and of office to be taken

Delegate to congress.

The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the president of congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with a

right of debating, but not of voting, during this temporary government.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected, to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory; to provide also for the establishment of states and permanent governments therein, and for their admission to a share in the federal councils, on an equal footing with the original states, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE 1.

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory. Religious worship.

ARTICLE 2.

The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings, according to the course of the common law. All persons shall be bailable, unless for capital offences, where proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever interfere with or affect private contracts or engagements, bona fide, and without fraud previously formed. Writ of habeas corpus and trial by jury secured, &c.
Fines, &c.
Compensation for property taken for public service.
Laws not to affect private contracts.

ARTICLE 3.

Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent, and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars, authorized by congress; but laws, founded in justice and humanity, shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them. Schools.
Indians.

ARTICLE 4.

Territory to remain forever part of confederacy.

Federal debts.

Taxes.

Primary disposal of soil to be by congress.

U. S. lands not to be taxed.

Navigable waters.

The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made, and to all the acts and ordinances of the United States in congress assembled conformable thereto. The inhabitants and settlers in the said territory, shall be subject to pay a part of the federal debts, contracted, or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states, as in the original states, within the time agreed upon by the United States in congress assembled. The legislatures of those districts, or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ARTICLE 5.

States, how to be formed in the territory.

Boundary of western state.

Middle state.

Eastern state.

States when to be admitted into the Union.

There shall be formed in the said territory not less than three, nor more than five states, and the boundaries of the states, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established, as follows, to wit: The western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north to the territorial line between the United States and Canada, and by the said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash, from Post Vincents to the Ohio, by the Ohio by a direct line due north from the mouth of the Great Miami to the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania and the said territorial line. *Provided, however,* and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted by its delegates, into the congress of the United States on an equal footing with the original states in all respects whatever, and shall be at liberty to form a permanent

constitution and state government. *Provided*, The constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles, and so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand. Provido.

ARTICLE 6.

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted. *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid. Slavery prohibited. proviso.

Be it ordained by the authority aforesaid, That the resolutions of the twenty-third of April, one thousand seven hundred and eighty-four, relative to the subject of this ordinance, be and the same are hereby repealed, and declared null and void. Resolutions repealed.

Done by the United States, in congress assembled, the thirteenth day of July, in the year of our Lord one thousand seven hundred and eighty-seven, and of their sovereignty and independence the twelfth.

WILLIAM GRAYSON, *Chairman.*

CHARLES THOMPSON, *Secretary.*

AN ACT to provide for the Government of the Territory northwest of the river Ohio. *Approved Aug. 17, 1789.*

Whereas, In order that the ordinance of the United States in congress assembled, for the government of the territory northwest of the river Ohio may continue to have full effect, it is requisite that certain provisions should be made so as to adapt the same to the present constitution of the United States : Preamble.

§ 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases in which by the said ordinance any information is to be given, or communication made by the governor of the said territory to the United States in congress assembled, or to any of their officers, it shall be the duty of the said governor to give such information, and to make such communication to the president of the United States ; and the president shall nominate and by and with the advice and consent of the senate shall appoint all officers which by the said ordinance were to have been appointed by the United States in congress assembled, and all officers so appointed shall be commissioned by him, and in all cases where the United States in congress assembled, might by the said ordinance revoke any commission or remove from any office, the president is hereby declared to have the same power of revocation and removal. Governor to make communication to president of U. S.
President and senate to appoint officers.
President to commission and remove.

§ 2. *And be it further enacted*, That in case of the death, removal, resignation, or necessary absence of the governor of the said territory, the secretary thereof shall be and he is hereby authorized and In cases of death, &c. secretary to exercise

tain powers of governor. required to execute all the powers and perform all the duties of the governor during the vacancy occasioned by the removal, resignation or necessary absence of the said governor.

AN ACT respecting the government of the Territories of the United States northwest and south of the river Ohio. *Approved May 8, 1792.*

(Section 1st omitted.)

Governor and judges may repeal their own acts.

§ 2. *And be it further enacted*, That the governor and judges of the territory northwest of the river Ohio shall be and hereby are authorized to repeal their laws by them made, whenever the same may be found to be improper.

Duties of secretaries subject to territorial laws. One judge may hold court.

§ 3. *And be it further enacted*, That the official duties of the secretaries of the said territories shall be under the control of such laws as are or may be in force in the said territories.

§ 4. *And be it further enacted*, That any one of the supreme or superior judges of the said territories, in the absence of the other judges, shall be and hereby is authorized to hold a court.

Seals for public offices.

§ 5. *And be it further enacted*, That the secretary of state provide proper seals for the several and respective public offices in the said territories.

AN ACT to divide the Territory of the United States northwest of the Ohio into two separate governments. *Approved May 7, 1800.*

[§ 1. The Indian territory constituted, and its boundaries defined, and includes therein the Michigan territory.]

Government of Indiana.

§ 2. *And be it further enacted*, That there shall be established within the said territory a government in all respects similar to that provided by the ordinance of congress, passed on the 13th day of July one thousand seven hundred and eighty-seven, for the government of the territory of the United States northwest of the river Ohio; and the inhabitants thereof shall be entitled to, and enjoy all and singular the rights, privileges and advantages granted and secured to the people by the said ordinance.

Rights of the people.

Ordinances and laws of U. S. to apply to territorial officers.

§ 3. *And be it further enacted*, That the officers for the said territory, who by virtue of this act shall be appointed by the president of the United States by and with the advice and consent of the senate, shall respectively exercise the same powers, perform the same duties and receive for their services the same compensations, as by the ordinance aforesaid, and the laws of the United States northwest of the river Ohio; and the duties and emoluments of superintendent of Indian affairs shall be united with those of governor. *Provided*, that the president of the United States shall have full power in the recess of congress to appoint and commission all officers herein authorized, and their commissions shall continue in force until the end of the next session of congress.

Governor made Indian agent. In recess of congress president to appoint officers.

General assembly as by ordinance, except, &c.

§ 4. *And be it further enacted*, That so much of the ordinance for the government of the territory of the United States northwest of the Ohio river as relates to the organization of a general assembly therein, and prescribes the powers thereof, shall be in force and operate in the Indiana territory whenever satisfactory evidence shall be

given to the governor thereof that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: *Provided*, That until there shall be five thousand free male inhabitants of the age of twenty-one years and upwards in said territory, the whole number of representatives to the general assembly shall not be less than seven nor more than nine, to be apportioned by the governor to the several counties in said territory agreeably to the number of free males of the age of twenty-one years and upwards, which they may respectively contain.

May consist of nine and not less than seven.

An ACT to divide the Indiana Territory into two separate governments. *Approved January 11, 1805.*

§ 1. *Be it enacted by the Senate and House of Representatives of the United States in Congress assembled*, That from and after the thirtieth day of June next, all that part of the Indiana territory which lies north of a line drawn east of a southerly bend or extreme of lake Michigan, until it shall intersect lake Erie, and east of a line drawn from the said southerly bend through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States, shall for the purposes of temporary government constitute a separate territory, and be called Michigan.

Michigan, its boundaries.

§ 2. *And be it further enacted*, That there shall be established within the said territory a government in all respects similar to that provided by the ordinance of congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States, northwest of the river Ohio; and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled "An act to provide for the government of the territory northwest of the river Ohio;" and the inhabitants thereof shall be entitled to, and enjoy all and singular, the rights, privileges and advantages granted and secured to the people of the territory of the United States, northwest of the river Ohio, by the said ordinance.

Its government.

Rights of the people.

§ 3. *And be it further enacted*, That the officers for the said territory, who, by virtue of this act shall be appointed by the president of the United States, by and with the advice and consent of the senate, shall respectively exercise the same powers, and perform the same duties, and receive for their services the same compensations, as by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the Indiana territory, and the duties and emoluments of superintendent of Indian affairs shall be united with those of governor.

Ordinances and laws of U. S. for Indians, how to apply.

Governor, Indian agent.

§ 4. *And be it further enacted*, That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the Indiana territory, further than to prohibit the exercise thereof within the said territory of Michigan, from and after the aforesaid thirtieth day of June next.

Government of Indiana not to be exercised.

§ 5. *And be it further enacted*, That all suits, process, and proceedings, which on the thirtieth day of June next, shall be pending in the court of any county which shall be included in the said territory

Suits pending, June 30, 1805, how disposed of.

of Michigan, and also, all suits, process and proceedings, which, on the said thirtieth day of June next, shall be pending in the general court of the Indiana territory, in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the territory of Michigan aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon in the same manner as if the said Indiana territory had remained undivided.

Detroit, the
seat of go-
vernment.

§ 6. *And be it further enacted*, That Detroit shall be the seat of government of the said territory until congress shall otherwise direct.

AN ACT to enable the people of the Illinois territory to form a Constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States. *Approved April 18, 1818.*

(Section 1st omitted.)

Boundaries
of Illinois.

§ 2. *And be it further enacted*, That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning at the mouth of the Wabash river, thence up the same, and with the line of Indiana, to the northwest corner of said state; thence east, with the line of the same state to the middle of lake Michigan; thence north along the middle of said lake to north latitude forty-two degrees and thirty minutes; thence west to the middle of the Mississippi river, and thence down along the middle of that river, to its confluence with the Ohio river, and thence up the latter river along its northwestern shore, to the beginning.

(Sections 3, 4, 5 and 6, omitted.)

Territory
not included
in Indiana
and Illinois,
attached to
Michigan.

§ 7. *And be it further enacted*, That all that part of the territory of the United States lying north of the state of Indiana, and which was included in the former Indiana territory, together with that part of the Illinois territory, which is situated north of, and not included within the boundaries prescribed by this act, to the state thereby authorized to be formed, shall be and hereby is, attached to, and made a part of the Michigan territory, from and after the formation of the said state, subject, nevertheless, to be hereafter disposed of by congress, according to the right reserved in the fifth article of the ordinance aforesaid, and the inhabitants therein shall be entitled to the same privileges and immunities, and subject to the same rules and regulations in all respects, with the other citizens of the Michigan territory.

AN ACT establishing the Territorial Government of Wisconsin.

What coun-
try shall
constitute
the Wiscon-
sin territory.

§ 1. *Be it enacted, by the senate and house of representatives of the United States of America in congress assembled*, That from and after the third day of July next, the country included within the following boundaries shall constitute a separate territory, for the purpose of temporary government, by the name of Wisconsin; that is to say: Bounded on the east, by a line drawn from the northeast corner of the state of Illinois, through the middle of Lake

Michigan, to a point in the middle of said lake, and opposite the main channel of Green Bay, and through said channel and Green Bay to the mouth of the Monomonic river; thence through the middle of the main channel of said river, to that head of said river nearest to the Lake of the Desert; thence in a direct line, to the middle of said lake; thence through the middle of the main channel of the Montreal river, to its mouth; thence with a direct line across Lake Superior, to where the territorial line of the United States last touches said lake northwest; thence on the north, with the said territorial line, to the White-earth river; on the west, by a line from the said boundary line following down the middle of the main channel of White-earth river, to the Missouri river, and down the middle of the main channel of the Missouri river to a point due west from the northwest corner of the state of Missouri; and on the south, from said point, due east to the northwest corner of the state of Missouri; and thence with the boundaries of the states of Missouri and Illinois, as already fixed by acts of congress. And after the said third day of July next, all power and authority of the government of Michigan in and over the territory hereby constituted, shall cease: *Provided*, Proviso. That nothing in this act contained shall be construed to impair the rights of person or property now appertaining to any Indians within the said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or anywise to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, or law, or otherwise, which it would have been competent to the government to make if this act had never been passed: *Provided*, Proviso. That nothing in this act contained shall be construed to inhibit the government of the United States from dividing the territory hereby established into one or more other territories, in such manner, and at such times, as congress shall, in its discretion, deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States.

§ 2. *And be it further enacted*, That the executive power and authority in and over the said territory shall be vested in a governor, who shall hold his office for three years, unless sooner removed by the president of the United States. The governor shall reside within the said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve of all laws passed by the legislative assembly before they shall take effect; he may grant pardons for offences against the laws of the said territory, and reprieves for offences against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, and shall take care that the laws be faithfully executed. Appoint-ment and powers of governor.

§ 3. *And be it further enacted*, That there shall be a secretary of the said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and pro- Secretary: his duties.

ceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings on or before the first Monday in December in each year, to the president of the United States; and at the same time, two copies of the laws to the speaker of the house of representatives, for the use of congress. And in case of the death, removal, resignation, or necessary absence, of the governor from the territory, the secretary shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the governor during such vacancy or necessary absence.

Legislature;
how constituted
and elected.

§ 4. *And be it further enacted*, That the legislative power shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue four years. The house of representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for the members of the council, and whose term of service shall continue two years. An apportionment shall be made, as nearly equal as practicable, among the several counties, for the election of the council and representatives, giving to each section of the territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the said members of the council and house of representatives shall reside in and be inhabitants of the district for which they may be elected. Previous to the first election, the governor of the territory shall cause the census or enumeration of the inhabitants of the several counties in the territory to be taken and made by the sheriffs of the said counties, respectively, and returns thereof made by said sheriffs to the governor. The first election shall be held at such time and place, and be conducted in such manner, as the governor shall appoint and direct: and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties is entitled under this act. The number of persons authorized to be elected having the greatest number of votes in each of the said counties for the council, shall be declared, by the said governor, to be duly elected to the said council; and the person or persons having the greatest number of votes for the house of representatives, equal to the number to which each county may be entitled, shall also be declared, by the governor, to be duly elected: *Provided*, The governor shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly shall meet at such place on such day as he shall appoint; but, thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties to the council and house of representatives, according to population, shall be prescribed by law, as well as the day of the annual commencement of the session of the said legislative assembly; but no session, in any year, shall exceed the term of seventy-five days.

Proviso.

Who shall
be eligible to
office.

§ 5. *And be it further enacted*, That every free white male citizen of the United States, above the age of twenty-one years, who shall have been an inhabitant of said territory at the time of its

organization, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters at all subsequent elections shall be such as shall be determined by the legislative assembly: *Provided*, That the right of suffrage shall be exercised only by citizens of the United States.

§ 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the governor and legislative assembly shall be submitted to, and, if disapproved by the congress of the United States, the same shall be null and of no effect.

§ 7. *And be it further enacted*, That all township officers and all county officers, except judicial officers, justices of the peace, sheriffs, and clerks of courts, shall be elected by the people, in such manner as may be provided by the governor and legislative assembly. The governor shall nominate, and, by and with the advice and consent of the legislative council, shall appoint, all judicial officers, justices of the peace, sheriffs, and all militia officers, except those of the staff, and all civil officers not herein provided for. Vacancies occurring in the recess of the council shall be filled by appointments from the governor, which shall expire at the end of the next session of the legislative assembly; but the said governor may appoint, in the first instance, the aforesaid officers, who shall hold their offices until the end of the next session of the legislative assembly.

§ 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office created, or the salary or emoluments of which shall have been increased whilst he was a member, during the term for which he shall have been elected, and for one year after the expiration of such term; and no person holding a commission under the United States, or any of its officers, except as a militia officer, shall be a member of the said council, or shall hold any office under the government of the said territory.

§ 9. *And be it further enacted*, That the judicial power of the said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate judges, any two of whom shall be a quorum, and who shall hold a term at the seat of government of the said territory, annually, and they shall hold their offices during good behavior. The said territory shall be divided into three judicial districts; and a district court or courts shall be held in each of the three districts, by one of the judges of the supreme court, at such times and places as may be prescribed by law. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law: *Provided, however*, That justices of the peace shall not have jurisdiction of any matter of controversy, when the title or boundaries of land may be in dispute, or where the debt or sum claimed exceeds fifty dollars. And the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction.

tion. Each district court shall appoint its clerk, who shall keep his office at the place where the court may be held, and the said clerks shall also be the registers in chancery; and any vacancy in said office of clerk happening in the vacation of said court, may be filled by the judge of said district, which appointment shall continue until the next term of said court. And writs of error, bills of exception, and appeals in chancery causes, shall be allowed in all cases, from the final decisions of the said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court, shall a trial by jury be allowed in said court. The supreme court may appoint its own clerk, and every clerk shall hold his office at the pleasure of the court by which he shall have been appointed. And writs of error and appeals from the final decisions of the said supreme court shall be allowed and taken to the supreme court of the United States, in the same manner, and under the same regulations, as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States. And the first six days of every term of the said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws. And writs of error, and appeals from the final decisions of the said courts, in such cases shall be made to the supreme court of the territory, in the same manner as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerk of the district court of the United States in the northern district of the State of New-York receives for similar services.

Attorney to
be appoint-
ed.

Marshal.

§ 10. *And be it further enacted*, That there shall be an attorney for the said territory appointed, who shall continue in office four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the Michigan territory. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, who shall execute all process issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the northern district of the State of New-York; and shall, in addition, be paid the sum of two hundred dollars, annually, as a compensation for extra services.

Governor,
&c. to be
approved by
the senate.

§ 11. *And be it further enacted*, That the governor, secretary, chief justice and associate judges, attorney, and marshal, shall be nominated, and, by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary, to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before some judge or justice of the peace in the existing territory of Michigan, duly commissioned and qualified to administer an oath or affirmation, to support the con-

stitution of the United States, and for the faithful discharge of the duties of their respective offices; which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken, and such certificate shall be received and recorded by the said secretary among the executive proceedings. And, afterwards, the chief justice and associate judges, and all other civil officers in said territory, before they act, as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The governor shall receive an annual salary of two thousand five hundred dollars for his services as governor and as superintendent of Indian affairs. The said chief justice and associate judges shall each receive an annual salary of eighteen hundred dollars. The secretary shall receive an annual salary of twelve hundred dollars. The said salaries shall be paid quarter-yearly, at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each per day, during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually travelled route. There shall be appropriated, annually, the sum of three hundred and fifty dollars, to be expended by the governor to defray the contingent expenses of the territory, and there shall also be appropriated, annually, a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws and other incidental expenses; and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

Salaries.

Contingent expenses.

§ 12. *And be it further enacted*, That the inhabitants of the said territory shall be entitled to, and enjoy, all and singular the rights, privileges, and advantages, granted and secured to the people of the territory of the United States northwest of the river Ohio, by the articles of the compact contained in the ordinance for the government of the said territory, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven; and shall be subject to all the conditions and restrictions and prohibitions in said articles of compact imposed upon the people of the said territory. The said inhabitants shall also be entitled to all the rights, privileges, and immunities, heretofore granted and secured to the territory of Michigan, and to its inhabitants, and the existing laws of the territory of Michigan shall be extended over said territory, so far as the same shall not be incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed, by the governor and legislative assembly of the said territory of Wisconsin; and further, the laws of the United States are hereby extended over, and shall be in force in, said territory, so far as the same, or any provisions thereof may be applicable.

Rights, &c. under the territorial compact of July, 1787, extended to Wisconsin.

And also those secured to Michigan.

Legislative
sessions.
when held.

§ 13. *And be it further enacted*, That the legislative assembly of the territory of Wisconsin shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said session, or as soon thereafter as may by them be deemed expedient, the said governor and legislative assembly shall proceed to locate and establish the seat of government for said territory, at such place as they may deem eligible, which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly. And twenty thousand dollars, to be paid out of any money in the treasury, not otherwise appropriated, is hereby given to the said territory, which shall be applied by the governor and legislative assembly to defray the expenses of erecting public buildings at the seat of government.

Delegate to
H. R. U. S.

§ 14. *And be it further enacted*, That a delegate to the house of representatives of the United States, to serve for the term of two years, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as have been granted to the delegates from the several territories of the United States to the said house of representatives. The first election shall be held at such time and place or places, and be conducted in such manner, as the governor shall appoint and direct. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given to the person so elected.

Provision
respecting
undetermined
suits.

§ 15. *And be it further enacted*, That all suits, process, and proceedings, and all indictments and informations which shall be undetermined on the third day of July next, in the courts held by the additional judge for the Michigan territory, in the counties of Brown and Iowa; and all suits, process and proceedings, and all indictments and informations which shall be undetermined on the said third day of July, in the county courts of the several counties of Crawford, Brown, Iowa, Dubuque, Milwaukee, and Des Moines, shall be transferred to be heard, tried, prosecuted, and determined, in the district courts hereby established, which may include the said counties.

§ 16. *And be it further enacted*, That all causes which shall have been or may be removed from the courts held by the additional judge for the Michigan territory, in the counties of Brown and Iowa, by appeal or otherwise, into the supreme court for the territory of Michigan, and which shall be undetermined therein on the third day of July next, shall be certified by the clerk of the said supreme court, and transferred to the supreme court of said territory of Wisconsin, there to be proceeded in to final determination, in the same manner that they might have been in the said supreme court of the territory of Michigan.

\$5,000 for
the pur-
chase of a
library.

§ 17. *And be it further enacted*, That the sum of five thousand dollars be, and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated, to be expended by and under the direction of the legislative assembly of said territory, in the purchase of a library for the accommodation of said assembly, and of the supreme court hereby established.

Approved 20th April, 1836.

AN ACT to divide the Territory of Wisconsin, and to establish the territorial government of Iowa.

§ 1. *Be it enacted by the Senate and House of Representatives of the United States of America in congress assembled,* That from and after the third day of July next, all that part of the present territory of Wisconsin which lies west of the Mississippi river, and west of a line drawn due north from the head waters or sources of the Mississippi to the territorial line, shall, for the purposes of temporary government, be and constitute a separate territorial government by the name of Iowa; and that from and after the said third day of July next, the present territorial government of Wisconsin shall extend only to that part of the present territory of Wisconsin which lies east of the Mississippi river. And after the said third day of July next, all power and authority of the government of Wisconsin, in and over the territory hereby constituted shall cease: *Provided*, That nothing in this act contained shall be construed to impair the rights of persons or property, now appertaining to any Indians within the said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or anywise to affect the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty or law, or otherwise, which it would have been competent to the government to make if this act had never been passed: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing the territory hereby established into one or more other territories, in such manner and at such times as congress shall, in its discretion, deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States.

Territory of Iowa erected.

Authority of Wisconsin when to cease.

Proviso.

Proviso.

(Sections 2 to 16 inclusive, omitted.)

§ 17. *And be it further enacted,* That all causes which shall have been or may be removed from the courts held by the present territory of Wisconsin, in the counties west of the Mississippi river, by appeal or otherwise, into the supreme court for the territory of Wisconsin; and which shall be undetermined therein on the third day of July next, shall be certified by the clerk of the said supreme court, and transferred to the supreme court of said territory of Iowa, there to be proceeded in to final determination, in the same manner that they might have been in the said supreme court of the territory of Wisconsin.

Causes removed from courts of Wisconsin to supreme court of Iowa.

(Section 18 omitted.)

§ 19. *And be it further enacted,* That from and after the day named in this act for the organization of the territory of Iowa, the term of the members of the council and house of representatives of the territory of Wisconsin, shall be deemed to have expired, and an entirely new organization of the council and house of representatives of the territory of Wisconsin, as constituted by this act, shall take place as follows: As soon as practicable after the passage of this act, the governor of the territory of Wisconsin shall apportion the thirteen members of the council and twenty-six members of the house of re-

Term of members of council and house of rep. when to expire, &c.

Appointment of members of council, &c.

First elec-
tion, when
held, &c.

Time and
place of
meeting.

representatives among the several counties or districts comprised within said territory, according to their population, as nearly as may be, (Indians excepted.) The first election shall be held at such time as the governor shall appoint and direct; and shall be conducted, and returns thereof made, in all respects, according to the provisions of the laws of said territory; and the governor shall declare the persons having the greatest number of votes to be elected, and shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. The persons thus elected shall meet at Madison, the seat of government, on such day as he shall appoint, but thereafter the apportioning of the representation in the several counties to the council and house of representatives according to population, the day of their election, and the day for the commencement of the session of the legislative assembly, shall be prescribed by law.

(Section 20 omitted.)

AN ACT to alter and amend the organic law of the Territories of Wisconsin and Iowa. *Approved March 3, 1839.*

Governor to
approve
bills.

§ 1. *Be it enacted by the Senate and House of Representatives of the United States of America in congress assembled,* That every bill which shall have passed the council and house of representatives of the territories of Iowa and Wisconsin, shall, before it become a law, be presented to the governor of the territory; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly by adjournment prevent its return, in which case it shall not be a law.

Bills not re-
turned.

Construc-
tion of act.

§ 2. *And be it further enacted,* That this act shall not be so construed as to deprive congress of the right to disapprove of any law passed by the said legislative assembly, or in any way to impair or alter the power of congress over laws passed by said assembly.

AN ACT to define and establish the eastern boundary line of the territory of Iowa. *Approved March 3, 1839.*

Eastern
boundary of
Iowa.

§ 1. *Be it enacted by the Senate and House of Representatives of the United States of America in congress assembled,* That the middle or centre of the main channel of the river Mississippi shall be deemed, and is hereby declared, to be the eastern boundary line of

the territory of Iowa, so far or to such extent as the said territory is bounded eastwardly by or upon said river : *Provided, however,* That the said territory of Iowa shall have concurrent jurisdiction upon the said Mississippi river with any other conterminous state or territory, so far or to such extent as the said river shall form a common boundary between the aforesaid territory of Iowa, and any other such conterminous state or territory.

STATUTES

OF THE

TERRITORY OF WISCONSIN.

Be it enacted by the Council and House of Representatives of the Territory of Wisconsin, as follows :

AN ACT concerning the time when acts shall take effect.

§ 1. That no public act, hereafter passed at this session of the legislature, shall be of force or take effect until the fourth day of July next, unless otherwise specially provided in the act itself. When to take effect.

AN ACT to provide for the printing and distribution of the laws of Wisconsin.

§ 1. The laws of the territory of a general nature shall be arranged in a proper order, printed on good paper, and handsomely and substantially bound in calf, and shall be ready for distribution on or before the first Monday of July next, after the passage of this act. Laws to be printed, &c.

§ 2. Such edition shall consist of fifteen hundred copies, and shall be contracted for on the most reasonable terms, by such person as may be appointed for that purpose, where the same may be done in the most expeditious and workmanlike manner. Number of copies.

§ 3. The person so appointed shall also procure the said edition, to be accompanied by an index, and full marginal notes, and shall also preface the laws with the constitution of the United States; the ordinance and acts of congress amendatory thereof; the act organizing the territory of Wisconsin, and such part of the act organizing the territory of Iowa, as relates to this territory. Marginal notes, index, &c.

§ 4. In preparing such edition, it shall only be necessary to place a general enacting clause at the commencement of the laws of the territory, and arrange the laws thereafter by their several titles, and divisions, without the signature of the presiding officers of the legislative assembly, and the approval thereof by the governor. Enacting clause dispensed with.

§ 5. Such edition, so prepared, shall be entitled to be read in evidence in any court of justice, or in any other place where a reference to the laws may be requisite within this territory. Laws to be read in evidence.

§ 6. All laws hereafter to be printed by authority of this territory, shall be distributed as follows, to wit: To the governor, secretary, judges of the supreme court, the United States district attorney, and the marshal of the territory, clerks of the supreme and district courts, treasurer, and auditor of the territory, attorney-general, and district attorneys, adjutant-general, quarter-master-general, county treasur- How distributed.

ers. registers of deeds, judges of probate, county commissioners, sheriffs, coroners, justices of the peace, president of any incorporated town or borough, members of the legislative assembly, delegate to congress, the governors of each of the states, and territories for the use thereof, one copy each; *provided*, that no person who may hold more than one of the above named offices, shall be entitled to more than one copy.

Number delivered to registers of deeds.

§7. Whenever the person appointed to procure the publication of the laws, as contemplated by this act, shall have the same completed, he shall as soon as may be, deliver or transmit to the registers of deeds in each of the organized counties, fifty copies thereof for distribution among the several officers of their respective counties; and it shall be the duty of said registers, to keep a correct statement of the name and office of the several persons who may receive copies thereof, and also to take a receipt for the same when delivered. And in case fifty copies should not supply the officers authorized to receive a copy of the laws in any county, the register shall inform the librarian, who shall immediately forward the number to make up the deficiency.

Duty of registers.

Copy, when to be redelivered to register.

§8. The copy delivered to any person shall have stamped or written thereon, the name of the office held by such person, and shall be again deposited in the office of said register on the expiration of his term of office, by the person to whom the same may have been delivered; and any person failing to deposit the said copy in pursuance hereof, shall forfeit the sum of ten dollars, to be recovered by said register in his own name, by action of debt in any court, for the use of the county.

Surplus copies, how disposed of.

§9. The several copies of the laws remaining after distribution among the several counties, as contemplated in the sixth section of this act, shall be deposited in the territorial library, and the librarian shall furnish each of the officers and persons, other than county officers, herein before designated, with a copy thereof, on demand, and shall take a receipt therefor, when delivered.

Person appointed to carry this act into effect, &c.

§10. Edward V. Whiton is hereby (*is hereby*) appointed to carry into effect the provisions of this act, and to prepare the proper marginal notes and index to accompany such edition; and the laws included in said volume shall be certified by him, under oath, to be a true copy of the statute laws on file in the secretary's office.

Money appropriated.

§11. The sum of twenty-five hundred dollars is hereby appropriated out of the contingent fund to be applied towards the payment for preparing and publishing said edition, to be drawn on the order of the person appointed to carry into effect the provisions of this act.

Bond to be given.

§12. The person appointed by this act, shall, within five days after the same shall be approved, execute a bond with two sufficient sureties, to the governor, for the use of the territory, in the sum of eight thousand dollars, conditioned for the faithful discharge of the duties imposed by this act.

Librarian may sell laws.

§13. The librarian is hereby authorized to sell to any individual a copy of the laws, at five *per cent* advance upon cost, any that he may have in his possession, after reserving five hundred copies for the use of the territory, not including those that are to be distributed to the several counties.

Act to take effect.

§14. This act shall take effect from its passage.

AN ACT concerning the construction of statutes.

§ 1. In the construction of all statutes the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature, or repugnant to the context of the same statute, that is to say:

First, All words and phrases shall be construed and understood according to the common and approved usage of the language, but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

Second, Every word importing the singular number only, may extend and be applied to several persons or things, as well as to one person or thing; and every word importing the plural number only, may extend and be applied to one person or thing, as well as to several persons or things; and every word importing the masculine gender only, may extend and be applied to females, as well to males.

Third, All words purporting to give a joint authority to three or more public officers, or other persons, shall be construed as giving such authority to a majority of such officers, or other persons, unless it shall be otherwise expressly declared in the law giving the authority.

Fourth, The word "grantor" may be construed as including every person from or by whom any freehold estate or interest passes, in or by any deed, and the word "grantee" as including every person to whom any such estate or interest passes in like manner.

Fifth, The word "highway" may be construed to include any road laid out by the authority of the United States, or of this territory, or of any town or county, and all bridges upon the same.

Sixth, The word "inhabitant" may be construed to mean a resident in any city or town.

Seventh, The words "insane person" shall be construed to include every idiot, non compos, lunatic and distracted person.

Eighth, The word "issue," as applied to the descent of estates, shall be construed to include all the lawful lineal descendants of the ancestor.

Ninth, The words "land," or "lands," and the words "real estate," shall be construed to include lands, tenements and hereditaments, and all rights thereto and interests therein.

Tenth, The word "month" shall be construed to mean a calendar month, unless otherwise expressed; and the word "year," a calendar year, unless otherwise expressed; and the word "year" alone, shall be equivalent to the expression "year of our Lord."

Eleventh, The word "oath" shall be construed to include "affirmations," in all cases where, by law, an affirmation may be substituted for an oath; and in the like cases the word "sworn" shall be construed to include the word "affirmed."

Twelfth, The word "person" may extend and be applied to bodies politic and corporate, as well as to individuals.

Thirteenth, The words "preceding," and "following," when used by way of reference to any section of any statute of this territory, shall be construed to mean the section next preceding, or next fol-

Rules for
construing
statutes.

Words and
phrases how
construed.

Singular and
plural num-
ber, gender,
&c.

Officers how
to exercise
authority,
&c.

"Grantor"
and "Grantee."

"Highway."

"Inhabitant."

"Insane person."

"Issue."

"Land,"
"lands," and
"real estate."

"Month"
and "year."

"Oath" and
"sworn."

"Person."

"Preceding"
and "following."

lowing that in which such reference is made, unless when some other section is expressly designated in such reference.

"Seal."

Fourteenth, In all cases in which the seal of any court or public office shall be required by law to be affixed to any paper issuing from such court or office, the word "seal" shall be construed to include an impression of such official seal, made upon the paper alone, as well as an impression made by means of a wafer or of wax affixed thereto.

"Town."

Fifteenth, The word "town" may be construed to include all cities and districts, unless such construction would be repugnant to the provision of any act specially relating to such cities or districts.

"Will."

Sixteenth, The term "will" shall be construed to include codicils, as well as wills.

"Written,"
and "in
writing."

Seventeenth, The words "written," and "in writing," may be construed to include printing, engraving, lithographing, and any other mode of representing words and letters; provided, however, that in all cases where the written signature of any person is required by law, it shall always be the proper hand writing of such person, or in case he is unable to write, his proper mark.

AN ACT to provide for and regulate general elections.

Election for
delegate to
congress,
when held.

§ 1. An election for a delegate to serve in the twenty-sixth congress, (or so much thereof as may remain after the term of the present delegate shall have expired,) shall take place on the first Monday in August, anno domini one thousand eight hundred and thirty-nine, and on the same day in every second year thereafter; an election for members to the house of representatives of the territory, shall take place on the first Monday in August, in the year of our Lord one thousand eight hundred and forty, and on the same day in every second year thereafter. *Provided*, That if the term of service of the members of the house of representatives shall expire before the time fixed in this section for the first choice of members of said house of representatives, it shall be the duty of the governor to issue his proclamation directing elections to be holden for the choice of said members; and said elections held pursuant to said proclamation, shall be as legal and valid as if the time of holding them had been fixed by law; an election for members of the council of this territory shall take place on the first Monday in August, one thousand eight hundred and forty-two, and on the same day in every fourth year thereafter; an election for county, town and district officers, shall take place on the first Monday in August next, and on the same day in each succeeding year, and all general and special elections for delegate to congress, members of the council and house of representatives, and all county, town and district officers, shall be conducted in the manner hereinafter prescribed.

For mem-
bers of
house of re-
presenta-
tives.

Members of
council.

County, town
and district
officers.

County com-
missioners
to appoint
judges of
election.

§ 2. The county commissioners shall respectively, at their regular annual session in April preceding the general election, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the elections at any election precinct, and for each of the polls of election, as provided for in this act setting off and establishing towns or districts (as the case may be;) and the clerk of the said board of commissioners shall make out and deliver to the sheriff of the county immediately after the appointment of said judges, a no-

tice thereof in writing, directed to the judges so appointed, and it shall be the duty of said sheriff, within twenty days after the receipt of said notice, to serve the same upon each of the said judges of the election. The said judges shall choose two persons having similar qualifications with themselves to act as clerks of the election. The said judges of election shall be and continue judges of all elections of civil officers to be held at their respective precincts, until other judges shall be appointed as herein before directed; and the said clerks of elections may continue to act as such during the pleasure of the judges of election. And the county commissioners shall, from time to time, fill all vacancies which may take place in the office of judges of election at any election precinct, within their respective counties.

Judges to appoint clerks.
How long judges to hold office.

§ 3. The clerks of the several boards of county commissioners, shall, at least fifty days previous to any general election, and at least twenty days previous to any special election, make out and deliver to the sheriff of his county, three written notices thereof for each election precinct; said notices to be as nearly as circumstances will admit as follows, to wit:

Clerk of commissioners to deliver sheriff notice of election.

Notice is hereby given, that on the Monday, the
day of next, at the house of
in the county of in the town or district of
an election will be held for territorial, county and town or district officers, (naming the offices to be filled, as the case may be,) which election will be opened at nine o'clock in the morning, and will continue open until four o'clock in the afternoon of the same day.

Form of notice.

Dated at this day of A. D. (as the case may be,) signed A. B. clerk of the board of county commissioners.

§ 4. The sheriff aforesaid, to whom such notice shall be delivered as aforesaid, shall post up in three of the most public places in each town or district, the notices referring to such town or district, at least thirty days previous to the time of holding any general election, and at least eight days before the time of holding any special election; and in cases where towns or districts may not be set off by law as election precincts, said notices shall be posted as follows: one at the house where the election is authorized to be held, and the two others at two of the most public and suitable places in that vicinity or settlement.

Sheriff to post notices.
How many, and where.

§ 5. If any person appointed to act as a judge of any election as aforesaid shall neglect or refuse to be sworn to act in such capacity, or shall not be present, the place of such person shall be filled by the votes of such qualified electors residing within the county, town or district, as may then be present at the place of election, and the person or persons so elected to fill such vacancy or vacancies, shall be and are hereby vested with the same power as if appointed by the board of county commissioners.

If judge neglect to be sworn, place how filled.

§ 6. Previous to votes being taken, the judges and clerks of the election shall severally take an oath in the following form, to wit: "I, A. B. do solemnly swear (or affirm, as the case may be) that I will perform the duties of judge (or clerk, as the case may be) according to law and to the best of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same."

Judges and clerk to take oath.
Form of oath

§ 7. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the

Judges to administer oaths to each other.

judges of the election, and they are hereby empowered to administer the oaths to each other and to the clerks of the election, and the person administering oaths shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books.

Time of opening and closing polls. § 8. At all elections to be held under this act the polls shall be opened between the hours of nine and twelve o'clock in the morning, and continue open until four o'clock in the afternoon of the same day, at which time the poll shall be closed: *Provided*, That the judges of the election, if they shall deem it necessary for the purpose of receiving the votes of all the electors wishing to vote, postpone the closing of the polls until nine o'clock at night, and upon opening the poll one of the clerks, under the direction of the judges, shall make proclamation of the same, and thirty minutes before the closing of the poll proclamation shall be made in like manner that the poll will be closed in half an hour.

Closing poll may be postponed.

Clerk to furnish stationery. § 9. The clerks of the election shall furnish the necessary poll books and stationery for conducting the same.

Manner of voting. § 10. The manner of voting shall be by the electors approaching the bar in the election room at any time when the poll is open, and by presenting a ticket folded in such a manner that no names on said ticket are visible to the judges, who shall deposit the same immediately in a ballot box prepared for that purpose, and the clerks shall take down the names of all such voters.

Where electors may vote. § 11. That it shall be lawful for any elector to vote for delegate to congress at any place of holding an election within this territory; for members of the council and house of representatives, at any place of holding an election in the county or district in which he may reside; for coroner, county commissioners and other county officers, at any place of holding an election in the county in which he resides, but for constable and other town officers he shall not vote out of the town or district in which he resides: *Provided*, That an elector qualified to vote for a part of, and not all the officers to be chosen at any election, shall present an open ticket, that the judges may determine the legality of such vote, and if upon canvassing the votes given at any election two or more votes shall be found folded together, the judges shall reject all the votes thus folded.

Manner of voting in certain cases.

Qualifications of electors. § 12. No person shall be entitled to vote at any election in this territory who has not attained the age of twenty-one years, who is not a free white male citizen, or a foreigner duly naturalized according to the acts of congress on that subject, and who has not resided in this territory with the *bona fide* intention of becoming a citizen for at least six months immediately previous to his application to vote; and when any person shall present himself to give his vote, and either of the judges shall suspect that such person does not possess the requisite qualifications of an elector, or if his vote shall be challenged by any elector, the judges of the election shall tender to such person an oath in the following form: "I, A. B. do solemnly swear (or affirm as the case may be) that I am a resident of the county of _____ in the territory of Wisconsin, a citizen of the United States, that I have resided in this territory for the period of six months immediately preceding the election, that I have to the best of my knowledge and belief attained the age of twenty-one years, and that I have not voted at this election." And if the person so offering to vote shall

Proceedings when person challenged.

Form of oath.

take such oath, his vote shall be received, unless it shall be proved by evidence satisfactory to a majority of the judges that he does not possess the qualifications of a voter, and if such person refuses to take such oath his vote shall be rejected; and if any person shall take the said oath, knowing it to be false, he shall be deemed guilty of wilful and corrupt perjury, and shall, on conviction, suffer such punishment as is now or shall hereafter be prescribed by law for persons guilty of perjury; and if any person shall vote at any election, who is not a qualified voter, he shall forfeit and pay a sum not exceeding fifty nor less than twenty-five dollars, to be recovered in the same manner as other penalties under this act may be.

Vote to be received, unless, &c.

False swearing, perjury.

Penalty.

§ 13. For the preservation of order, as well as to secure the judges and clerks from insult and abuse, it shall be the duty of the constable, or constables, residing in the town or district, who shall be designated for the purpose by the judges of the election to attend all elections within such town or district, and should no constable attend at such election, the judges of election are hereby authorized and empowered to appoint one or more special constables to assist in preserving order during the election; and the judges are hereby authorized to enforce a fine not exceeding twenty dollars on any person or persons who shall conduct in a riotous or disorderly manner, and shall persist in such conduct, after having been warned of the consequences, and on refusal to pay the same to commit him or them to the common jail of the county for any time not exceeding six days, or until the fine shall be paid; and the constable to whom the order shall be directed, and the jailor of the county, are hereby required to execute said order, and receive such person or persons so committed as though it had been issued by a magistrate in due form of law.

Constables to attend elections.

Penalty for disorderly conduct.

§ 14. The votes shall be publicly examined, and counted immediately after the close of the polls; and the clerks shall set down in their poll books, the name of every person voted for, written at full length; the office for which such person received such vote or votes; and the number he did receive; the number being expressed at full length; such entry to be made, as near as circumstances will admit, in the following form, to wit:

Votes publicly examined, &c.

Votes, how entered.

At an election held at the house of _____ in _____ town (or district) in the county of _____ and territory of Wisconsin, on the _____ day of _____ A. D. _____ The following named persons received the number of votes annexed to their respective names, for the following described offices, to wit:

Form of entry.

A. B. had _____ votes for delegate to congress.
C. D. had _____ votes for member of the council.
E. F. had _____ votes for member of the house of representatives.
G. H. had _____ votes for coroner.
L. K. had _____ votes for county commissioner, (and in the same manner for any other persons voted for.)

Attest,

Certified by us,

G. H. }
J. K. } *Clerks of Election.*

A. B. }
C. D. } *Judges of Election.*
E. F. }

Poll books,
how dispo-
sed of.

The judges of election shall then enclose and seal one of the poll books under cover, directed to the clerk of the board of county commissioners, of the county in which such election was held; and the packet thus sealed, shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot otherwise agree, and delivered to the said clerk of the board of commissioners, at his office within nine days from the close of the polls; and the other poll book shall be deposited with one of the judges of election, to be determined as aforesaid. And the said poll book shall be sub-

Penalty for
neglecting to
deliver poll
book.

ject to the inspection of any elector, who may wish to examine it. And if any judge, or clerk of an election, after having been deputed by the judges of the election at which he shall have served as judge or clerk, to carry the poll book of such election to the clerk of the board of county commissioners, shall fail or neglect to deliver such poll book to the said clerk, within the time prescribed by law, safe, with the seal unbroken, he shall, for every such offence, forfeit and pay the sum of five hundred dollars, for the use of the county; to be recovered by an action of debt, in the name of the county commissioners, in the district court.

Returns,
how examin-
ed.

§ 15. On the twentieth day, after the close of any election, or sooner, if all the returns be received, the clerk of the board of county commissioners, taking to his assistance two justices of the peace of his county, shall proceed to open said returns, and make abstracts of of the votes in the following manner:

Abstract of
votes, how
made.

Duty of
clerk.

The abstract of the votes for delegate to congress, shall be on one sheet; the abstract of votes for members of the legislative assembly, shall be on one sheet; the abstract of votes for county officers shall be on another sheet. And it shall be the duty of the said clerk of county commissioners, immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, and county officers respectively, and to deliver said certificate to the person entitled to it on his making application to the clerk at his office: *Provided*, That when a tie shall exist between two or more persons, for the council or house of representatives, the clerk of the board of commissioners shall give notice thereof to the sheriff of the county, who shall advertise another election; giving, at least, ten days notice. And it shall be the duty of the clerk of the board of commissioners of each county, on the receipt of the election returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of each election may be entitled for their services, and lay the same before the board of commissioners at their next session; and the said board shall order the compensation aforesaid to be paid out of the county treasury.

In case of a
tie.

Certificate of
compensa-
tion.

Proceedings
in case of a
tie for a
county of-
ficer.

§ 16. If the requisite number of county officers shall not be elected by reason of two or more persons having an equal and the highest number of votes for one and the same office, the clerk, whose duty it is to compare the polls, shall give notice to the several persons, so having the highest, and an equal number of the votes, to attend at the office of the proper clerk, at a time to be appointed by the said clerk, who shall then and there proceed publicly to decide by lot, which of the persons so having an equal number of votes, shall be declared duly elected; and the said clerk shall make out and de-

liver to the person thus declared to be duly elected, a certificate of his election, as herein before provided.

§ 17. The clerk of the board of county commissioners, immediately after making out abstracts of the votes given his county, shall make a copy of each of said abstracts, and transmit it by mail to the secretary of the territory at the seat of government: And it shall be the duty of the secretary of the territory with the marshal of the territory, or his deputy, in presence of the governor, to proceed within fifty days after the election, and sooner, if all the returns be received, to canvass the votes given for delegate to congress; and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice by reason of any two or more persons, having an equal number of votes, the governor shall order a new election.

Clerk to mail copy of abstracts.

Votes of delegate to congress, how canvassed.

Governor to give certificate, &c.

When no choice.

§ 18. If the returns of the election of any county in this territory, shall not be received at the office of the secretary of the territory within thirty days after the day of election, the said secretary shall, forthwith, send a messenger to the clerk of the board of commissioners of such county, whose duty it shall be to furnish said messenger with a copy of such returns; and the said messenger shall be paid out of the treasury of the territory the sum of ten cents for each mile he shall necessarily travel, in going to and returning from the office of said clerk.

Duty of secretary when returns not received.

§ 19. Any person who shall receive a certificate of his election as a member of the council or house of representatives of the legislative assembly, coroner or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or have taken the requisite oath of office; and when any vacancy shall happen in the office of members of the council or house of representatives of the legislative assembly, by death, resignation or otherwise, the governor shall issue a writ of election directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges of election in his county or district to hold a special election to fill such vacancy or vacancies, at a time to be appointed by the governor: *Provided*, That if there be no session of the legislative assembly between the happening of such vacancies and the time of the general election, it shall not be necessary to order a special election to fill such vacancy; and when any vacancy shall happen in the office of sheriff, either by death, resignation or otherwise, the clerk of the board of county commissioners, in which such vacancy shall happen, shall immediately notify the governor, that he may fill such vacancy; and when any vacancy shall happen in the office of delegate to congress, from this territory, it shall be the duty of the governor to issue his proclamation, appointing a day to hold a special election to fill such vacancy.

Certain officers may resign before taking oath, &c.

Vacancies, how filled.

In case of delegate to congress.

§ 20. When two or more counties are united in one council or representative district, the clerk of the board of county commissioners of the county last established shall, within twenty days after the day of election, attend at the office of the clerk of the board of commissioners of the senior county, and there, in conjunction with the clerk or clerks of the senior county or counties, shall compare the votes given in the several counties composing such council or representative

When two or more counties unite in one election district.

district, and said clerks shall immediately make out a certificate of the election of the person or persons having the highest number of votes in such counties for a member of the council or house of representatives of the legislative assembly; which certificate shall be delivered to the person entitled to it, on his application to the clerk of the board of county commissioners of the senior county, at his office.

Penalty for corruptly violating provisions of this act.

§ 21. If any judge or clerk of the election, or any other person, in any manner concerned in conducting the election, or any clerk of the board of county commissioners, shall corruptly violate any of the provisions of this act, he shall forfeit and pay to the county a sum not less than fifty, nor more than five hundred dollars, to be recovered in action of debt, in the name of the county commissioners of the proper county.

Duty of clerk of com. in case of vacancy in legislative assembly.

§ 22. When any vacancy shall happen in the office of member of the council or house of representatives of the legislative assembly, by death, resignation or otherwise, it shall be the duty of the clerk of the board of county commissioners of the county, if one county only compose the council or representative district, as soon as he shall be informed thereof, to notify the governor of such vacancy, and if there be more than one county comprised within the limits of such council or representative district, it shall be the duty of the clerk of the board of county commissioners of the senior county in such district so to notify the governor. The governor, immediately upon his receiving such notification, shall proceed in the same manner as is prescribed for other cases in the nineteenth section of this act.

Judges of election, how paid, &c.

§ 23. There shall be allowed, out of the county treasury of each county, to the several judges and clerks of election, such compensation, not exceeding two dollars per day, as the board of county commissioners shall deem proper to allow, and to the person carrying the poll book from the place of election to the clerk's office, the sum of five cents per mile, for going and returning. The board of county commissioners shall also allow to the clerks of election such compensation as they shall deem just for any stationery such clerks may furnish for the purposes of the election.

Com. to establish election precincts.

§ 24. The county commissioners of each county, at their annual meeting in April, shall proceed to establish as many election precincts, or points at which general elections shall be kept open, as they may deem proper and necessary to suit the convenience of the settlements, and give notice thereof immediately thereafter in some newspaper printed in the county, if there be one; if not, then by posting three notices thereof in three public places, within the county; and upon application to said commissioners at any time more than thirty days previous to an election, the county commissioners may appoint new election precincts.

Notice to be given.

Vacancy how filled when county divided.

§ 25. If a vacancy shall occur in the council or house of representatives of this territory from any cause, and if the county or counties composing the district in which such vacancy have happened shall have been divided after the election of the member whose seat is vacant, and before the election to supply the vacancy, such election shall be ordered in every county in which any part of the original county or district may be situated; but no person shall be permitted to vote at any such election who does not at the time reside within the limits of the original county or district in which such vacancy

may have occurred: *Provided*, That nothing herein contained shall be construed to permit any person to vote so residing within the said limits, who has not the other qualifications of a voter.

§ 26. In cases of elections to fill vacancies as provided for in this act, the returns shall be made by the clerks of the boards of county commissioners, of the different counties, within twenty days, to the office of the clerk of the board of county commissioners of the original county composing the district; and certificates of election shall be made out and signed by the clerks of the boards of county commissioners of the different counties in which such election may have been held. Returns how made.

§ 27. No election return shall be refused by any clerk of the board of county commissioners, for the reason that the same may be returned or delivered to him in any other than the manner directed in this act; nor shall he refuse to include any return in his estimate of votes for any informality in holding any election or making return thereof, but all returns shall be received, and the votes canvassed by such clerk, and a certificate given to the person or persons who may by such returns have the greatest number of votes. Returns not to be refused for irregularity.

§ 28. This act shall take effect from and after the first day of April next, and shall be published in the several newspapers of the territory. Act to take effect.

AN ACT to provide for a territorial revenue.

§ 1. That for the purpose of raising a territorial revenue to defray the expenses authorized by law to be paid out of the territorial treasury, it shall be the duty of the county commissioners of each of the counties of this territory, at the time of the filing of the assessment roll, to deduct from the gross amount of taxes there charged five per cent, to be set apart by the said county commissioners as a debt due from said county to the territory. Five per cent of taxes to be set apart.

§ 2. The county commissioners shall furnish the treasurer of the territory, immediately after the same may be filed, with a copy of the duplicate for their respective counties for the current year, together with the sum which will be due from said county to the territory for that year; and the commissioners of any county who shall neglect or refuse to furnish a copy of the duplicate of their county, as is herein required, within sixty days after the same shall have been filed, shall be held liable, in their individual capacity, for the amount due from said county to the territory for such year, and shall, moreover, be assessed in damages of twenty per cent; to be recovered in the same manner as other like fines and forfeitures are or may be by law recoverable. Treasurer to be furnished with copy of duplicate. Penalty for neglect.

§ 3. The first moneys which may be returned by the collector collected from the duplicate of any year, to the amount due the territory for that year from the county, shall be retained by the treasurer of each county for the use of the territory; and the county treasurers shall pay over the same upon the drafts or warrant of the treasurer of the territory. County treasurer to retain certain moneys.

§ 4. The duties herein enjoined upon the county treasurer shall be so considered that a departure therefrom shall be deemed a breach of the conditions of their official bonds, so that they and their securities shall be liable to the territory for any loss which may accrue. Violation of this act breach of bonds.

therefrom ; and any county treasurer who shall dishonor or refuse to pay the drafts of the territorial treasurer; for any money which may be in his hands, and due from said county at the time to the territory, shall be amerced in damages of fifty per cent.

AN ACT for assessing and collecting county revenue.

What prop-
erty to be
taxed.

§ 1. That for the purpose of raising a revenue to defray the public charges and expenses in the several counties in this territory, it shall be the duty of the county commissioners in their respective counties to levy taxes on the following property and no other, to wit: all lands, town lots, and out lots, which are not exempted from taxation by the laws of the United States, or of this territory, and not including any improvements made thereon, either in building or otherwise, and on all merchandize and stock actually paid in, in any incorporated company.

Tax limited.

§ 2. The commissioners shall at their regular session in July, or so soon thereafter as the assessment roll is filed, levy a per centage on real and personal property as aforesaid, sufficient, when added to the amount that will probably be received by the county from other sources of revenue, to defray the current expenses of such county, and to liquidate its debts for the year, but such per centage shall not in any case exceed ten mills on the dollar.

Assessors to
be elected in
each county.
&c.

§ 3. That at the time and place of holding the election for county commissioners, there shall be elected by ballot three assessors for each county, who shall be qualified electors, and whose term of office shall be one year, and until their successors are duly elected and qualified; each assessor shall within six days after receiving a certificate of his election, enter into bonds with security to be approved by the board of county commissioners in such penalty as they may deem sufficient, conditioned for the faithful performance of his duties, and also take an oath or affirmation, to be administered by the clerk of the board of county commissioners, well, truly and faithfully to discharge the duties required of him by law; the board of commissioners shall at their regular session in July, one thousand eight hundred and thirty-nine, divide their respective counties into three districts, and assign to each assessor his district as soon as the assessors are chosen, according to the provisions of this act; said board shall also at their regular session in July, one thousand eight hundred and forty, and thereafter, annually examine the assessment rolls of the several districts in their respective counties, with a view to ascertain whether the valuation in one district have a just relation or proportion to the valuation in the other districts of the county, and may, in their discretion, add to or deduct from the valuations of any such district such a per centum as may in their opinions be necessary, to produce a just relation between all the valuations of real estate in the county: *Provided*, That nothing herein contained shall subject any churches, colleges, school-houses, or other public buildings, including the ground on which they are erected and necessarily used for the accommodation of said churches, colleges, school and other public buildings, to the payment of any county, territorial, road or other tax contemplated by this law.

§ 4. If any assessor so elected under the provisions of this act shall refuse to accept of such office, or fail to comply with the foregoing sections, the clerk of the board of commissioners shall upon such failure issue a notice thereof to the board of commissioners, which shall be served by the sheriff upon said commissioners, and it shall be the duty of said commissioners upon receiving such notice thereof, to call a meeting forthwith, and appoint some suitable person to fill such vacancy, which assessor so appointed shall be qualified according to the foregoing section; and should any assessor die, or become unable from bodily infirmity, or any other cause, to complete the assessment of his county, township or district, according to the provisions of this act, upon information thereof to the clerk aforesaid, a like summons as above mentioned shall be by him issued, and the appointment and qualification thereupon made; and such last mentioned assessor shall demand and receive the assessment roll of his predecessor, or of the person in whose possession it may be, and proceed to complete the assessment of taxable property according to the provisions of this act; and if the roll of his predecessor cannot be obtained, the clerk, on application, shall make out a new form.

Assessor refusing to accept, death, &c.

§ 5. Immediately after the election and qualification, each assessor shall commence assessing all property subject to taxation within his township, district, or county, as the case may be, and shall deliver to the board of commissioners on or before the first Monday in July thereafter a full and complete assessment roll thereof, which roll shall exhibit *(the description, number of acres, and value of the land,* the description, number of acres, and value of the lands, the description and value of the town lots, and all other property specifically chargeable with tax for county purposes. The lands shall be designated by the numbers and description as laid down on the plot or map of the original surveys, and the town lots by their numbers and description, as laid down on the plan of said town, or by the boundaries, if no other specific description can be obtained; and all lots in towns or villages, the plots or plans of which have not been recorded, shall be taxed in the same manner that lots are in towns and villages whose plots or plans have been recorded, and all tracts and lots of land owned by non-residents, or persons unknown, and where specific description is not furnished by the owner or claimant, shall be described by their subdivisions, as known or designated on the map or plan deposited in the office of the clerk, or any other public officer, or which are generally recognized as containing a correct representation of the same by their numbers or other specific description, and and as the property of persons unknown and non-residents. The value of the land shall be determined as described in this act, and in establishing the value of town lots the assessor shall take to his assistance two discreet persons; and should any person feel aggrieved by the value which may be affixed upon his land by the assessor, or by the value at which the appraisers estimated his town lot, he may produce evidence before the board of commissioners, and if they think the value too high or too low, they shall order the clerk to alter it accordingly.

To assess property & deliver assessment roll to county som.

Contents of assessment roll.

§ 6. The clerk of each board of commissioners shall prepare blank forms of assessment rolls under this act and deliver one to each of the assessors of his county at the time of his qualifying.

Forms to be prepared.

Roll, how
corrected.

§7. The assessors shall give two weeks public notice in some newspaper, printed in their respective counties, or by posting up three notices within their several districts, setting forth that on the last Monday in June, the assessor will attend at the office of the clerk of commissioners, and with the assistance of said clerk, shall publicly, in order that all persons interested may have the necessary corrections made, examine the assessment rolls and correct all double or imperfect listing or errors, in valuations, descriptions, or quantities of lands, or lots; and if it shall appear that there are omissions, or lands taxable not entered by the assessor on his roll, the clerk and assessor shall correct all such omissions, and shall enter upon the rolls lands so omitted, as non-resident lands. And if the entry of any tract of land or lot cannot be rendered certain in its description by the before mentioned examinations, such entry shall be rejected from the roll, and the assessor shall within five days thereafter return to the clerk a correct description of such lands or lot, and the clerk shall thereby amend the defective entry in said roll. And if the assessor shall fail to attend at the time and place required, the roll, when returned, shall be compared, corrected, and completed, as herein required; and for such failure the assessor shall be liable under this act for a violation of his duty. Public notice shall be given in the usual manner by the assessor of each county, two weeks previous to the last Monday in June, that such examination will then be had.

Roll laid be-
fore com-
missioners,
and accept-
ed, &c.

§8. After the clerk and assessor shall have corrected the assessment roll, as aforesaid, the same shall be laid before the board of commissioners; and if it be found to contain all the taxable land in said county, and is otherwise correct, the board shall accept it in writing on the back thereof, signed and attested by their clerk; and the clerk shall file the same in his office, where it shall remain unalterable as a matter of record, and shall be a guide for future assessors as far as the same may remain correct; the assessment roll shall every year be corrected in the manner named in the preceding section of this act, before such roll shall be accepted and filed as aforesaid.

Lands omit-
ted to be tax-
ed, liable to
next assess-
ment.

§9. Whenever any assessor shall discover, during the time he is making his assessment, that there are tracts of land, town lots, or chattels subject to taxation in his county or district, which were liable to taxation, and were omitted by the assessor in one or more preceding years, he shall enter the same upon his roll, noting distinctly the years in which such omission was made, in the same manner as the assessment for the current year; but no such assessment shall be made for a longer period than one year back, and such assessment shall have the like force and effect as assessments made at the proper time, and the tax due thereon shall be charged and collected with the revenue of the year in which such assessment is made, and land and town lots shall be subject to the taxes omitted to be assessed as aforesaid, in whose hands soever they may come.

Assessor to
retain dupli-
cate of roll.

§10. For the purpose of aiding future assessors in making assessments under this act, the first assessor shall make out and retain in his possession a duplicate of his assessment roll, and shall make the necessary corrections therein, from time to time, so that it correspond with the assessment roll filed in the office of the clerk. And when he is succeeded in office, he shall deliver the same, with all other documents in his possession, relating to said office, to his successor.

§ 11. The board of commissioners, shall allow to the assessors in their respective counties, such compensation as to them shall seem just and reasonable, to be paid out of the treasury of the proper county on the order of said board, as other moneys are paid. At the time the collector of the county makes returns of the amount of taxes collected by him, of unassessed property, as hereinafter provided, the said board shall make an order, deducting such sums as to them may seem reasonable, from the allowance made to such assessor as shall fail to assess such property. If such assessor shall have received his pay for assessing, he and his securities shall be liable on their bond for the amount of such deduction.

Compensation of assessors.

§ 12. The board of commissioners, for the purpose of enabling the clerk to calculate and carry out the amount of tax on all property returned by the assessor, shall, at their session in July of each year, determine the rates of taxation upon the several subjects allowed to be taxed for county revenue under the restrictions of this act, and enter such determination on record, which shall govern the clerk in making the said calculation.

Rates of taxation, how determined.

§ 13. Immediately after the return, perfection, acceptance, and filing of the assessment roll, as hereinbefore directed, the clerk shall calculate, and carry out the amount of taxes opposite to the specified property, lots or lands charged with tax, and within fifteen days after the filing, shall make out and deliver a certified statement of the amount as exhibited by said assessment roll, to the treasurer of the county, and within the same time shall also make out a duplicate or transcript of the roll or rolls aforesaid, and deliver the same, together with a precept, in the name of the territory, tested by the clerk, and under the seal of the board of commissioners, directed to the collector of his county, commanding him to collect the taxes charged in such transcript by demanding payment of the persons charged therein, and making sale of their goods and chattels, or the tracts of land or lots, mentioned in said transcript, if necessary, and that he pay over the moneys collected by him by virtue of said precept as therein directed, and return such precept, together with the transcript of the roll aforesaid, and account of his acts thereon to the said clerk, on or before the first Monday in January next ensuing the date thereof.

Clerk to calculate amount of tax.

To deliver statement to treasurer, &c. with precept.

What precept to contain.

§ 14. Whosoever may be in possession of any real estate at the time any tax is to be collected, shall be liable to pay the tax thereon; and if any other person, by agreement or otherwise, ought to pay such tax or part thereof, the person paying the same may, by action of debt, recover the amount paid, from the person so bound or liable, with damages not exceeding twenty per cent on such amount; and all taxes on real estate shall be a lien thereon until paid, and have preference of all other charges, and all taxes upon personal estate shall have preference of other demands.

Who liable to pay tax.

Tax a lien, &c.

§ 15. On the day of the next annual election, and thereafter annually, there shall be elected in each county of this territory, by its qualified voters, a county collector, who shall hold his office one year, and until another is duly qualified and elected, or until another shall be appointed as hereinafter provided.

Election of collector.

§ 16. The collectors of the several counties shall collect the county revenue, and pay over to the county treasurer all such sums collected, and take his receipt therefor, which receipt shall be a sufficient

Duty of collectors.

voucher for the board of commissioners to cancel the amount of such assessment roll, charged in their books against said collector.

Collector to demand payment of tax.

§ 17. The collector, on receiving the duplicate and precept, which he shall demand at the office of the clerk at the expiration of the time limited for their completion, shall proceed to collect the taxes charged therein, by demanding payment thereof, at the most usual places of residence of each person charged in the duplicate, or from the person so charged at any other place, on or before the first Monday in November next ensuing; and on the payment of the full amount of the county revenue due from any person, shall give a receipt, in which the amount paid, and for what year, shall be particularly designated in words at full length: *Provided*, That a demand of any person, at any other time, shall be a sufficient demand.

Tax laid on land owned by several persons.

§ 18. In cases of assessment of taxes, in gross, upon any tract or lot of land, the collector shall, upon the application of any part claimant or owner thereof, whether his interest be divided or undivided, receive a part of the tax, interest, and charges due thereon, proportionate to the part of such lot or tract so owned or claimed; and the balance of such taxes, interest and charges, shall be a lien only on the balance of such lot or tract of land.

May collect tax by distress.

§ 19. If the taxes are not paid to the collector on or before the first Monday of November, he may proceed to collect the same by distress and sale of the goods and chattels of the person charged, or of the person found in possession of the lands or town lots charged with such unpaid taxes, giving six days' notice of the time and place of such sale, by written notices set up in three of the most public places in said county.

Notice to sell land for taxes.

§ 20. If no goods or chattels can be found out of which to make the taxes charged on lands or town lots, the collector shall give notice in some weekly newspaper published in his county, or if no such paper be there published, then in some paper published in the county nearest thereto; also by posting up four written notices, one on the court-house door, and the others in three of the most public places in said county, for four weeks preceding the second Monday in December, annually, notifying all whom it may concern, that he will on the second Monday in December next ensuing the date of such notice, commence selling at the court-house door, or at the most public place in the county seat, all and singular the lands and town lots in said county on which the taxes due for the year or years (naming the year or years for which he is authorized to collect) are not paid on or before the said second Monday of December, and that such sale will be continued from day to day, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon of each day, until all are offered for sale; and it is hereby made the duty of the collector to describe, in the written notice posted at the door of the court-house, each tract of land or town lot intended to be sold as aforesaid.

How given and what to contain.

Proof of publishing notice.

§ 21. Before any collector shall proceed to make any sale of real estate under the provisions of this act, he shall procure and file in the clerk's office of his county a verification under oath of the printer, or some person belonging to his office, that the advertisement hereinbefore required to be published, relative to the sale of lands and town lots, a copy of which is to be annexed to such verification, has been duly published the length of time required by this act.

§ 22. After having filed evidence of the publication of the notice, as required in the preceding section, the collector shall proceed, in pursuance thereof, on the said second Monday of December, between the hours of nine and four o'clock of said day, to expose to sale each and every tract of land and town lot on which the taxes are not paid, by the description and number by which they are designated on the duplicate, for the taxes and interest due thereon, and the costs of advertising and selling the same; or he may expose to sale so much of said tract of land, or lots, as will sell for the amount due and chargeable thereon. Such collector shall declare, at the time of sale, in what manner the division of a lot, or tract of land, shall be made, if a part thereof will pay the tax and other charges; and he shall continue from day to day, between the said hours, to expose the said lands and lots to sale to the highest bidder, until all shall be duly offered.

§ 23. When any lots or tracts of land, or part thereof, shall be sold for the non-payment of the taxes and costs, and charges thereon, the collector shall give to the purchasers a certificate, in writing, describing the same with specific certainty, the sum paid therefor, and the time when the purchaser will be entitled to a deed for such lot or tract, or part thereof; which certificate shall be assignable and transferable by endorsement on the same, and such assignment shall have the same force and effect as the assignment of other bonds for the conveyance of lands. And if the owner, or claimant, of the lot or tract of land described in such certificate shall not, within two years from the date thereof, pay to the purchaser, his heirs or assigns, or to the clerk of the board of commissioners of the county in which such lot, or tract of land, shall be situated, for the use of such purchaser, his heirs or assigns, the sum mentioned in such certificate, with interest thereon at the rate of thirty per cent per annum, together with such other taxes, costs and charges upon the lot, or tract of land sold, as may have accrued under the laws of this territory, and been paid by such purchaser, his heirs or assigns, vouchers of such payment being deposited with the said clerk of the board of commissioners, or produced to such owner, or claimant, then the said collector, or his successor in office at the time such deed is demanded, shall, at the expiration of the said two years, execute to the said purchaser, his heirs or assigns, in the name of the territory of Wisconsin, a conveyance of the lot, or tract of land, so sold as aforesaid, and described in said certificate, which conveyance shall vest in the person to whom it is given an absolute estate, in fee simple, subject to the claims of the county for all taxes, costs and charges, if any, accrued and remaining unpaid upon such lot, or tract of land, after such sale as aforesaid. And such conveyance shall be prima facie evidence that the sale was regular, according to the provisions of this act; and every such conveyance, executed by the collector, and duly acknowledged before any officer authorized to take acknowledgments of conveyances, may be recorded, and have like force and effect as other conveyances when acknowledged and recorded.

• § 24. Idiots, femmes couvertes and insane persons who are owners or claimants of lands, or lots, sold under the provisions of this act, may redeem such lands, or lots, at any time not exceeding five years after the sale thereof, in the same manner that is provided in other cases.

For minors.

§ 25. Whenever the land of minors shall be sold for taxes the same shall be redeemable when said minor becomes of age and one year thereafter.

How lands redeemed.

§ 26. Every person wishing to redeem any lands, or lots, sold under the provisions of this act, by depositing the money with the clerk of the board of commissioners of the proper county, shall pay to said clerk, at the time of depositing the redemption money, the sum of seventy-five cents for his services.

When sale not valid.

§ 27. No sale of lands for taxes nor deed made in pursuance thereof, shall be of any validity if the taxes for which the same is sold shall have been paid prior to such sale.

When lands to remain charged with tax.

§ 28. All lands and town lots which shall not be sold as above provided, when the taxes charged thereon still remain unpaid, shall still remain charged therewith until finally paid; and such taxes and charges from the second Monday of December, in the year such taxes were assessed, shall bear interest at the rate of seven per cent per annum until paid. The board of commissioners, before the duplicate for the succeeding year is made out, shall examine the delinquent list returned by the collector, and strike therefrom all lands which they know to be forfeited or relinquished to the United States, all lands or lots which have been double listed, or on which the taxes have been paid, and correct all errors that may exist, and see that the clerk makes due return of such corrected lists of former years to the collector every year. The several clerks, when they make out the duplicate of taxes for each year, shall annex to such duplicate the taxes and charges of any and all former years that remain as unpaid, on lands, lots and personal property, on the delinquent list of the preceding year after its correction by the board as herein before directed, and the same, together with the interest thereon, shall be collected by the collector of the current year, as herein before directed.

Tax a lien on land.

§ 29. Taxes are hereby made a lien on the land or town lot on which they may be due, in whosoever hands such lands or town lots may come. And when any land or town lot is offered for sale for any such taxes, it shall not be necessary that the collector should sell it as the property of any particular person; and if it should be sold as the property of any particular person, no misname of the owner, or supposed owner, or other mistake respecting the ownership of said land or town lot, shall ever in any way effect [affect] the sale or render it void or voidable.

Property released before sale.

§ 30. At any time before the sale of goods and chattels, or lands and town lots, under the provisions of this act, the owner or claimant may release the same by the payment of the taxes, interest and charges, for which the same are liable to seizure and sale; and whenever any balance of any sale of any goods and chattels under this act, over and above what is sufficient to pay the taxes, interest and charges for which the same were sold, remains, the collector shall pay the same over to the owner of such goods and chattels on his demand; and if at any time within two years after the payment of tax, the person who has paid the same can satisfy the board of county commissioners that such tax was improperly assessed, or paid by mistake when it was not legally chargeable, the said board shall order the same to be repaid, and such order shall be a legal debt against the county, and shall be paid by the treasurer of said county; and

Surplus how disposed of.

Illegal tax.

such treasurer shall be entitled to a credit for the amount thereof, as in cases of payment of other claims.

§ 31. In cases where sales of goods and chattels, lots or lands, are made under the provisions of this act, unless the purchaser shall, within such time as may be allowed by the collector who makes such sale, pay the purchase money, the collector may at his discretion again expose the property to sale, or sue such person for the amount of the purchase money, and recover the same with costs and ten per centum damages.

In case purchase money not paid.

§ 32. If the collector of any county shall at any time unavoidably fail to offer for sale the delinquent land, or town lots, in his county, or may have offered them for sale, and the purchaser thereof shall refuse to pay the collector the amount due thereon, it shall be the duty of such collector to again advertise and sell such lands or lots, on the second Monday in April next ensuing; and such advertising and sale shall in all things be governed by the provisions of this act, and be as legal and valid to all intents and purposes as such sales would have been had they been made on the second Monday in December. And when such collector shall have settled at the treasury, at the proper time, the amount charged against him, he shall be entitled to draw on the treasury for the balance in his favor, on account of lands that shall not sell when offered by him on the said second Monday in April, which account shall be made out and sworn to, as is provided in this act, for his delinquent return.

Lands when to be resold.

Collector to draw on treasury.

§ 33. The collector of taxes, in his return to the precept before mentioned, shall state fully and distinctly the payment of taxes made by way of credit to the property charged on the transcript of the assessment rolls aforesaid, the payment enforced by the distressed sales of goods and chattels, and in like manner the sales of lots and tracts of lands or parts thereof, and the persons to whom and the sums for which the same were sold; also the taxes remaining unpaid, designating particularly the tracts or lots remaining unsold, the name of owner or claimant if known, the name of the person delinquent in the payment of other taxes, and the tax or property with which he is charged, and the legal cause of failure to enforce payment as commanded in said precept, and such other special matters as are provided by this act to be by him done. And the truth of such return shall be verified by the affidavit of the collector, to be taken before the clerk of the board of commissioners. And if any individual shall be injured, or sustain a damage by a false return of any collector, made to any precept under the provisions of this act, or other illegal or fraudulent act of such collector, such individual, upon suit to be brought against such collector and his securities upon their bond for his use, shall recover treble damages and full costs and charges.

Contents of collector's return to precept.

Truth of return how verified.

§ 34. It shall be the duty of the clerk of the board of commissioners of the several counties, to make four copies of the lists of delinquents as returned by the collectors of their several counties, one of which they shall put up in some conspicuous place in their office, and shall keep the same up at least twelve months, and shall cause three other copies to be posted up in three of the most public places in their counties, within ten days after receiving said return. And the board of commissioners of the county may, if they should deem it necessary

Lists of delinquents to be posted.

ry, cause fifty copies of such delinquent list to be printed and circulated in their county.

When to collect taxes.

§ 35. All collectors shall have power to proceed in the collection of taxes due them, for two years from the time at which they were bound to pay over to the county in each year, in the same manner they would have done during their appointment or term of office; but this provision shall not be so construed as to authorize any collector to collect taxes by him returned as delinquent, after receiving credit therefor.

To assess property not taxed.

§ 36. Each and every collector is authorized and required to assess a county tax on all real or personal estate that may not have been assessed; and at the time he makes return of the precept and delinquents, as required by this act, shall make out and verify by affidavit, a list of the property by him so assessed, and the taxes collected thereon; and no allowance shall be made to any collector on his delinquent list, by the board of commissioners, until he shall have complied with the foregoing requisition. And it shall be the duty of the clerk to publish a list of the property that has been so assessed, and the taxes thereon by the collector, at the same time that he publishes the delinquent list.

Proceedings when tax illegally assessed.

§ 37. When any collector discovers that any tract of land, or town lot, has been assessed more than once for the same year, he shall credit only the tax really due, and make return of the balance as illegal assessments, and in all cases where too much personal property has been, through mistake, charged by the assessors, the collector may remit the excess of tax, and report the same with the list of illegal assessments: *Provided, however,* That all such lists of illegal assessments returned by the collector, shall contain description of the property illegally assessed, and state in what the illegality consists, and the names of the persons concerned, and be verified by affidavit and filed with the clerk, before it shall have any effect.

In case of death of collector, &c.

§ 38. If any collector shall die, or become unable, from bodily infirmity or other causes, to perform the duties of his office, the board of commissioners shall forthwith appoint a collector in the place of the one deceased or infirm, as aforesaid, who shall take the oath of office before said clerk, with like penalty and condition as hereinafter prescribed. And the said collector shall forthwith demand and receive, from the person in whose possession the same may be, the precept and duplicate of the assessment rolls as aforesaid, and shall immediately proceed to complete the collections as commanded by said precept; and such collector shall be liable, under the provisions of this act, for the amount of the assessed taxes of his county, after deducting those which appear from the memorandum of the deceased, or the statements of the infirm collector, to have been collected. And the executors, administrators, heirs, devisees, and securities of the deceased or infirm collector and his securities, shall be liable, under the provisions of this act, for the amount of taxes collected by them severally, unless the same be paid over as herein provided. And any person injured by the neglect of a deceased or infirm collector to enter credits for taxes paid on the transcripts aforesaid, shall have redress by action on such collector's bond for the damages thereby sustained; and if any person charged with the taxes on the transcript of the deceased or infirm collector, (no evidence being furnished to the successor of payment thereof, by or on the part of such collec-

tor, deceased or infirm,) be able to produce a receipt for such taxes paid such prior collector, the successor aforesaid shall not be charged therewith, but shall take up such receipt, giving his own in lieu thereof, and return the same with said receipt, and the amount thereof shall be recoverable as before provided : *Provided, however,* That this section shall not be so construed as to prohibit any collector who may be disabled by bodily infirmity, from appointing deputies under the provisions of this act hereinafter provided.

§ 39. Every collector of taxes shall receive, for any individual or individuals, orders regularly drawn upon the treasurer of his county, in payment of taxes due said county. Collector to receive county orders.

§ 40. It shall be the duties of the collectors of the several counties to pay the county treasurer the amount of taxes assessed in their respective counties, on or before the first Monday in January in each year; and if there be any deficiency in the amount thereof, he shall account for the same by producing to the board of county commissioners a certified statement, to be made by the clerk, attested by his signature and official seal, of the amount of delinquencies in the payment of taxes, specifying the name of the person and the property or tax for which he is delinquent, as appears from such collector's return to the precept; and it is made the duty of the clerk to make out such statement and certificate, and calculate the amount thereof, and if the amount of such certified statement of delinquencies, and the treasurer's receipt for the payment aforesaid, will balance the charges on the books of the county commissioners, they shall give him a receipt for the amount of such taxes. To pay over money. In case of deficiency.

§ 41. Each collector shall be entitled to the following fees for his services : five dollars for every one hundred dollars of county taxes by him collected, and in the same proportion for less sums, to be retained by him in making payment, and credited therefor in his settlement with the board of county commissioners; five per centum commission where goods are distrained, and taxes, commission, and charges paid before sale; eight per centum commission on sales of distress, and charges for keeping property distrained, together with the tax and charges out of the moneys received therefrom; on sales of real estate five per centum on the amount for which the same is exposed to sale, and twenty-five cents for each certificate of sale under this act, which are to be added to, and estimated in, the sum for which any tract of land or lot, or part thereof, shall be sold. Fees of collector.

§ 42. If any collector shall fail to make settlement of the taxes assessed in his county, for county purposes, at the time required by this act, it shall be the duty of the board of county commissioners forthwith to charge in the account against such collector, five per centum damages on the amount of balance due from such collector on account of such taxes, for such delinquency; and unless the said debt and damages, and the interest thereon, be paid to the treasurer of the county, the county commissioners shall with due diligence cause suit to be commenced upon such collector's bond, against him and his securities, for the debt and damages due as aforesaid; and said amount shall bear interest from the day at which payment thereof should have been made, at the rate of ten per centum per annum until paid. Collector failing to make settlement.

§ 43. Upon the trial of any such suit, the stated account of the collector, against whom the suit is brought, certified by the clerk of

the board of commissioners as truly transcribed from the accounts current against such collector on the books of said commissioners, authenticated by the county seal, shall be conclusive evidence of the demand against such collector and his securities; nor shall such collector or his securities be permitted to set-off, or allege, in payment of such demand, any payment or claim of credit, unless the same has first been presented to the board of county commissioners, and been allowed or rejected by them, or the same could not, by using due diligence, have been presented to said board of commissioners for their determination thereon, to be had before trial of such suit.

Failure to
return pre-
cept, or
false return.

§ 44. If any collector shall fail to return the precept and duplicate, as hereinbefore directed, or shall make a false return thereto, the judgment, upon the determination of the suits which may be brought by the board of county commissioners against such collector and his securities, shall be for the full amount of the taxes for the county revenue, as contained in the transcripts of the assessment rolls aforesaid, together with the damages, commission, costs, and charges, as herein before provided; and of the amount of said taxes, the stated account of the board of commissioners aforesaid, in the several cases shall be sufficient evidence; and it shall be the duty of the district attorney to aid the board of commissioners in prosecutions under this act, when requested, and to give advice and counsel concerning the revenue, when requested by any officer concerned in the collection thereof.

Penalty for
neglect of
duty by offi-
cers, &c.

§ 45. If any officer shall neglect or refuse to perform any of the duties imposed upon him by this act, he and his securities shall forfeit and pay to the county not less than fifty nor more than one hundred dollars for each offence, besides all damages which may be sustained by the county or any individual in consequence of such violation of his duty, to be recovered with costs of suit, in action to be brought upon the official bond of such officer.

Bonds how
taken and
suits how
brought.

§ 46. All bonds directed to be taken by this act shall be made payable to the board of county commissioners of the proper county, and all suits brought thereon shall be prosecuted in the corporate name of the board of county commissioners, and if brought for the use, or benefit, or by the direction of any person or persons, such suit shall be brought in the corporate name of the board of county commissioners, on the relation of such person or persons; and several rights may be prosecuted in the same suit on such bond, and one judgment entered thereon shall be no bar to other rights; but the board of county commissioners, or any person having right thereto, may have the defendants to such judgment again summoned by scire facias, to show cause why execution should not be had on such judgment for the debt or damages supposed to be due, owing or belonging to the party complaining, as often as such right may accrue.

Penalty for
withholding
money due
county.

§ 47. Any officer withholding the payment of any moneys belonging to the county after the same shall be demanded, or become due, shall be liable to pay ten per centum in damages, and ten per centum interest per annum from the date of such defalcation, to be recovered of such officer and his securities, or either of them, by action as in other cases; and the accounts in favor of the county, in all cases upon the trial against all and every person or persons, charged on the books of the board of county commissioners, and certified

to be true by the clerk of said board of commissioners, as above provided in the case of collections, and authenticated by their seal, shall be evidence in all cases of debtors of the charges therein stated, and put the defendant upon his defence to the demand.

§ 48. The collector, before he enters upon his official duties, shall take an oath or affirmation before some person authorized to administer the same, that he will well and truly perform the duties of his office as collector, and shall enter into bond to be filed with the clerk, with security to be approved of by the board of county commissioners, in the penalty of fifteen thousand dollars, conditioned for the faithful performance of the duties of his office as prescribed by law; and such collector may appoint as many deputies as he may think necessary or proper, who shall be sworn, and possess the same power and authority as his principal, such collector being at all times responsible for the acts of his deputies; and should any deputy fail to pay over any moneys collected by him, as such, for county revenue, such principal is hereby authorized to proceed against him, in the same summary manner as is provided for proceeding against collectors in like cases.

Collector to take oath and give bond.

May appoint deputies.

AN ACT to prescribe the tenure of office of auctioneers, and to levy a duty upon sales at auction in certain cases.

§ 1. That the governor, by and with the advice and consent of the council, shall appoint so many persons as he may think proper, to be auctioneers, not however exceeding five in each of the organized counties in this territory, who shall hold their offices for the term of two years, but their commission may at any time be revoked by the governor.

Auctioneers, how appointed, &c.

§ 2. The persons so appointed auctioneers shall, on the receipt of their commission, cause it to be recorded by the clerk of the board of county commissioners in a book to be by him kept for that purpose.

Commission recorded.

§ 3. Each auctioneer shall give a bond, in a reasonable penalty, with sufficient sureties, to the United States, with condition to pay all auction duties required by law, to the treasurer of the county in which he resides, and also that he shall, in all things, well and truly conform to the laws relating to auctions; which bond shall be taken by the county commissioners, and be by them transmitted to the county treasurer, with an endorsement of their approval thereon.

To give bond.

§ 4. If any person, not licensed and qualified as an auctioneer, shall sell, or attempt to sell, any real or personal estate whatsoever, by way of public auction, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding two hundred dollars, for every offence, to the use of the county.

Penalty for selling without license.

§ 5. If any person licensed as aforesaid shall receive for sale by auction any goods, from any minor or servant, knowing him to be such, or shall sell by auction any of his own goods, before sunrise or after sunset, he shall forfeit, to the use of the county, a sum not exceeding one hundred dollars, for each offence: *Provided however*, That books and prints not prohibited by law may be sold at any hour of the day.

For selling goods of minor. Selling at certain times.

§ 6. If any auctioneer shall, in any other county than that for which he is licensed, sell or offer for sale by auction, any lands, goods

For selling out of county.

or chattels, he shall be punished by fine not exceeding fifty dollars; but any parcel of real estate lying partly in one county and partly in another may be sold within either of such counties by an auctioneer of either county.

Auction
sales sub-
ject to tax,
except, &c.

§ 7. All sales by auction shall be subject to a tax, except the following, viz: sales made pursuant to any judgment, sentence, decree, order or rule of any court or judicial officer of the territory, or of any court of the United States having jurisdiction in this territory; sales made by virtue of any writ, execution, warrant of distress or order of law; sales of property held by executors, administrators or guardians of estates of citizens of the United States, lying or being within this territory; sales of articles manufactured and sold for charitable purposes; sales of books and stationery; sales of pews in houses of public worship; sales of utensils of husbandry, horses, neat cattle, hogs and sheep; sales of articles grown or manufactured within this territory.

Amount of
tax on sale
of stocks,
&c.

§ 8. The tax upon the sale of stocks of any state, or of any county or town of this territory, the shares of the stock of any incorporated bank, insurance companies, manufacturing companies, and also of any company whatever, incorporated under the authority of this territory, shall be one-fifth of one per cent on the amount of sales; the tax upon sales of real estate, and of ships and vessels, shall be one per cent on the amount of the sales; and the tax upon all other sales shall be two per cent on the amount thereof.

1b.

§ 9. All contracts and engagements for any lease or under-lease of real estate, or for the assignment of any lease or under-lease of real estate which shall be made or entered into by way of sale or bidding at public auction, if the same shall be bid off or sold for a gross sum, shall be subject to a tax of one-half of one per cent on such gross sum.

1b.

§ 10. If such contract or sale as described in the preceding section shall be for an annual rent, or for a sum payable by instalments for any term not exceeding fourteen years, the gross amount of such rent or instalments shall be subject to a tax of one-half of one per cent, and for any term beyond fourteen years, to a tax of one-fourth of one per cent.

1b.

§ 11. All contracts and agreements for the sale, delivery or supplying of any goods, wares and merchandize, or other personal property, which shall be made or entered into by way of bidding or sale at public auction, shall be deemed sales by public auction of personal estate, and shall be subject to a tax of two per cent on the whole value or amount of the goods or property which are the subject of such contract or agreement.

When prop-
erty sold
to fix price.

§ 12. When any sale or bidding shall be made at public auction upon the rent of any smaller parcel of real estate for a shorter term, for the purpose of fixing and determining the rent or price of a longer term, and where such sale or bidding in regard to any goods, wares and merchandize, or other personal property, or any contract or agreement to sell, deliver, furnish or supply the same, shall be of or upon any less quantity for the purpose of fixing the price of a larger quantity, in every such case the whole amount of the property sold, transferred, contracted for or negotiated by the terms and conditions of such auction, and the amount of the rent for the whole of the real

estate so agreed to be leased, and for the whole term for which it is to be leased, shall be subject to a tax as if the whole had been set up and sold by auction.

§ 13. When any auction for the sale or lease of any property, or for any contract in relation thereto shall have been actually begun, and the final purchase or bidding shall have been made by the owner of the property, by the auctioneer, or by any person employed by either of them, the same tax shall be paid as if the bidding had been made by any other person. Property bid off by owner.

§ 14. Every auctioneer, except in cases where the amount of taxes accruing upon his sales made for six months previous to the first day of June shall not exceed ten dollars, as hereafter provided for, shall, on the first day of June and December in each year, or within sixty days thereafter, render to the treasurer of the county in which he may reside, a true and particular account in writing of all his sales and transactions at auction not exempted from taxation, and of all the sums of money arising therefrom, such amounts to include all his said sales and transactions between the time to which his last preceding account was rendered, and the said first days of June and December respectively. Auctioneer to account to county treasurer.

§ 15. The account mentioned in the preceding section shall carefully distinguish between sales of real estate and personal estate, and between sales of an entire property and of any part sold or bid upon for the purpose of fixing the price of any other part or the whole thereof. Real and personal estate distinguished.

§ 16. The auctioneer shall take and subscribe before some justice of the peace, on oath, that such account is true, that he has carefully examined all his entries and memorandums of sales by auction and otherwise, and that the account exhibits the whole amount thereof which is liable by law to pay a tax, and the oath so taken shall be certified and endorsed by the justice on said account. To make oath.

§ 17. The auctioneer at the time of rendering such account shall pay to the treasurer the amount of the tax accruing upon the sales therein, deducting five per cent of the tax as a compensation. To pay tax to the treasurer.

§ 18. Where the amount of taxes accruing upon the sales made by any auctioneer for six months previous to the first day of June, shall not exceed ten dollars, he may make his return for the whole year preceding the first day of December, either on that day or within sixty days thereafter. When tax less than ten dollars.

§ 19. If any auctioneer shall neglect to pay into the treasury the amount of taxes at the time required by law, he shall forfeit his said compensation of five per cent, and shall pay interest on the amount of said tax at the rate of two per cent a month from the expiration of said sixty days until the same be paid; to be recovered in action upon his official bond. Penalty for neglect.

§ 20. No auctioneer shall demand or receive a higher compensation for his services than a commission of two and one-half per cent on any sales, public or private, made by him, unless by virtue of a previous agreement in writing between him and the owner or consignee of the goods or effects sold. Compensation.

§ 21. If any auctioneer or other person shall be guilty of any fraud or deceit in the execution of any of the provisions of this act in rela- Penalty for fraud.

tion to sales by auction, he shall for every such offence forfeit a sum not exceeding five hundred dollars.

When act
not to apply.

§ 22. Any person being at the time a resident of this territory, may sell his own property, personal or real, at auction, or in any other way, the same being his household goods, any product or manufacture of this territory, without being in any manner affected by or subject to any of the preceding provisions of this act.

AN ACT relating to the militia.

TITLE I.

Persons lia-
ble to duty.

§ 1. That all able bodied free white male inhabitants, between the ages of eighteen and forty-five years, resident in this territory, and not exempted from serving in the militia, by the laws of the United States, or of this territory, are subject to military duty within this territory.

Who ex-
empt.

§ 2. In addition to the persons exempted by the laws of the United States, the following persons shall be exempt from military duty.

1st. The secretary of the territory.

2nd. The members of the legislature, and its officers, during the session thereof, and fourteen days before and after each meeting.

3d. Ministers and preachers of the gospel, teachers in all colleges.

4th. Officers hereafter to be commissioned, who shall serve as such in the militia of this territory, or in that of any one of the United States for the space of five years ; but no such officer who may have served in the militia of this territory shall be so exempt unless by his resignation, after such term of service duly accepted, or in some other lawful manner he shall have been honorably discharged from his commission.

5th. Every non-commissioned officer, musician and private, of every uniform company, raised or hereafter to be raised, who has uniformed himself, or shall hereafter uniform and equip himself, and whose term of service in such company shall have amounted, or shall amount to ten years from the time of his enrolment therein, shall be exempt from military duty, except in cases of insurrection or invasion.

6th. If any member of such company, who shall have been regularly uniformed and equipped, shall, upon his removal out of the district of such company, or upon the disbandment thereof, enlist into another uniformed company, and uniform and equip himself therefor, and serve in the same, whenever the whole time of his service in such companies, computed together, shall amount to ten years, he shall be exempt from military duty, in like manner, as if he had served for the whole period in the company in which he was first enrolled.

7th. Every person actually employed by the year or season on board any vessel, or in the merchant service or coasting trade in this territory, all firemen attached to supply engines, and all other firemen belonging to any company in any city or village in this territory, not exceeding twenty-four (24) in number, attached to a fire engine, unless, in cases otherwise especially provided, shall be exempt from military duty, and also all ferrymen actually employed on post roads,

not exceeding two in number, to each ferry, except in cases of war, insurrection or invasion.

TITLE II.

OF THE APPOINTMENT OF MILITIA OFFICERS AND THE TENOR OF THEIR OFFICES.

§ 1. The officers of the militia shall be appointed in the manner prescribed in the seventh section of the "act of congress, establishing the territorial government of Wisconsin," and shall hold their commissions without limitation of time, subject however to be revoked and determined by the governor of the territory for the time being, at his pleasure.

Officers,
how appointed.

Tenure of
office.

§ 2. The commander-in-chief shall appoint his own staff.

Staff of com.
in chief.

§ 3. Major-generals, brigadier-generals, and commanding officers of regiments, or separate battalions, shall appoint the staff officers of their respective divisions, brigades, regiments, or separate battalions.

Other staff
officers.

§ 4. No commissioned officer can be removed, except by the governor, or by the decision of a court-martial pursuant to law.

Officers,
how removed.

§ 5. Sergeant-majors, quarter-master sergeants, sergeant-standard-bearers, drum-majors, fife-majors, and trumpet-majors, shall be appointed by the commanding officer of the regiment or separate battalion to which they shall belong, by warrant under the hand of such commanding officer, and shall hold their office during his pleasure.

Warrant of
officers.

§ 6. Whenever the office of any commissioned officer in the militia, except those of the staff, shall become vacant, the commander-in-chief shall have power to fill the same, which appointment shall continue until the last day of the next succeeding session of the legislative assembly.

Vacancies,
how filled.

§ 7. Every officer duly commissioned, shall within twenty days after his commission shall be tendered to him, or within twenty days after he shall be personally notified that the same is held in readiness for him, by any superior officer, take and subscribe an oath to support the constitution of the United States of America, and well and faithfully discharge the duties of his said office; and in case of neglect or refusal to take such oath within the time mentioned, he shall be deemed to have resigned said office, and a new appointment shall be forthwith made to fill his place. The neglect or refusal of an officer appointed to take such oath, shall be no excuse for neglect of duty until another shall be duly commissioned in his place.

Officers to
take oath.

§ 8. Every commissioned officer shall take and subscribe such oath before a judge of some court of record in this territory, clerks of courts, notaries public, justice of the peace, or some general or field officer, who having previously taken it himself, is hereby authorized to administer the same.

By whom
administered.

§ 9. A certificate of the oath, shall be endorsed by the officer administering the same, on the commission, and no fee shall be received for administering any such oath or endorsing such certificate.

Certificate
endorsed on
commission.

§ 10. All non-commissioned officers of companies shall be appointed by the commandants of their respective companies, but shall not be removed except by the approbation of the commandant of the regiment, or separate battalion to which the said company may belong.

Non-com-
missioned
officers, how
appointed.

Resignations

Not to be
accepted in
certain
cases.

§ 11. The commanding officers of brigades may accept the resignations of all commissioned officers in their respective brigades; but no resignation of any captain or subaltern shall be accepted until the same shall have been approved of by the commanding officer of the regiment to which the officer so resigning may belong. No officer shall be permitted to resign his commission who shall be under arrest, or shall be returned to a court-martial for any deficiency or delinquency, and no commanding officer of a brigade, regiment or separate battalion, shall approve or accept any resignation, unless the officer tendering the resignation shall furnish satisfactory evidence that he has delivered all moneys in his hands as such officer, and all books and other property of the territory in his possession, to his next superior or inferior officer, or to the officer authorized by law to receive the same.

To notify
com. in chief

§ 12. The commanding officer of a brigade, on accepting any resignation, shall forthwith communicate the same to the commander-in-chief; also to the commandant of the regiment to which the officer resigning may belong; and if any such officer be a subaltern, he shall also communicate the same to the commandant of his company.

Com. in
chief may
accept resignations.

§ 13. The commander-in-chief may accept the resignation of any officer whose resignation the commanding officer of a brigade is not authorized to accept, and he may also accept the resignation of any officer whose resignation the commanding officer of his brigade shall have refused to accept, and cause such vacancies to be filled without delay.

Office how
vacated.

§ 14. Every officer who shall remove out of the bounds of his command, or who shall be absent from his command twelve months without leave of the commanding officer of his brigade, or regiment, shall be considered as having vacated his office.

Commission
how for-
warded.

§ 15. The commissioned officer who shall receive a commission for any subordinate officer, shall within thirty days thereafter, give notice thereof in writing, by mail or otherwise, to the person entitled to it.

TITLE III.

OF THE ENROLMENT OF PERSONS SUBJECT TO MILITARY DUTY.

Enrolment.

§ 1. The commanding officer of each company of infantry shall from time to time enrol all persons within the limits of his company, who may be subject to military duty, and shall without delay notify such persons of their enrolment.

1b.

§ 2. Every notice or warning, to a person so enrolled, to attend a company, battalion or regimental muster or training, pursuant to the provisions of this act, shall be deemed a legal notice of his enrolment.

Duty of per-
sons enroll-
ed.

§ 3. Every person duly enrolled, shall be provided, within six months from and after he shall be duly notified of his enrolment, with arms, accoutrements and ammunition, agreeably to the directions of the laws of the United States.

Age and
ability. a

§ 4. The age and ability to bear arms, of every person so enrolled, shall be determined by the commandant of such company, subject to an appeal to the commanding officer of the regiment; but the

decision of neither of these officers shall prevent a court-martial from determining whether such person was duly enrolled.

§ 5. Persons claiming to be exempted from enrolment, by reason of inability to bear arms, may produce the certificate of a surgeon or surgeon's mate, as evidence of such inability; but it shall not be lawful for the surgeon giving the same to take any fee or reward therefor. Certificate of surgeon.

§ 6. All tavern-keepers, keepers of boarding-houses, persons having boarders in their families, and house-keepers, upon their being thereto requested by the commanding officer of the company within the district of which they reside, shall give to such commanding officer a true account of all persons lodging or boarding with them, and of their names, if known, to the end that such persons as are liable to do military duty may be enrolled according to law. Tavern-keepers to give notice.

§ 7. If any person of whom such account is so demanded, shall refuse to give an account, he shall forfeit and pay ten dollars for every individual name that may be refused, omitted, concealed, or falsely stated, to be recovered by the commanding officer of the regiment for the use of his regiment. Penalty for refusing.

§ 8. Every commandant of a company may enrol as musicians in his company, at least two, and not more than five, persons residing in his district, who are desirous to be so enrolled. Musicians.

§ 9. The person so enrolled shall perform the duty of musician in such company instead of serving as privates therein, and shall respectively be entitled to the same privileges and exemptions as non-commissioned officers and privates in uniform companies, and shall be subject to the same fines and penalties for the non-performance of their duty, as non-commissioned officers are liable to for absence from parade. Exemptions.

§ 10. No such musician, after being enrolled, shall enlist into another company without the written consent of the commanding officer of the company to which he belongs. Not to enlist in other companies.

TITLE IV.

OF THE ORGANIZATION, UNIFORM, AND DISCIPLINE, OF THE MILITIA.

§ 1. The organization of the militia in divisions, brigades, regiments, battalions, and companies shall be conformed to the provisions of the laws of the United States. Militia, how organized.

§ 2. Subject to such laws the commander-in-chief may arrange, alter, divide, annex and consolidate the divisions, brigades, regiments, battalions and companies, in such manner as in his opinion the proper organization of the same shall require. lb.

§ 3. The commanding officer of each brigade, with the approbation of the commanding officer of his division, may divide, annex or alter the bounds of the several regiments, or separate battalions under his command; and in all cases of alteration in the bounds of any regiment, that part containing the major part of the companies of any one regiment shall retain its name, number and rank. The commanding officer of each regiment or separate battalion, with the approbation of the commanding officer of his brigade, may divide, annex, or alter the bounds of the several companies under his command. Bounds of regiments, &c. how altered.

Alterations
to be report-
ed.

When offi-
cer deemed
to have re-
signed.

§ 4. All such alterations shall be forthwith reported to the commander-in-chief, and remain in force until he shall otherwise direct.

§ 5. Every officer rendered supernumerary by any consolidation or alteration of regiments, separate battalions or companies, shall be deemed to have resigned his commission, unless he shall have given written notice of his intention to retain his rank in the line, to the commanding officer of the brigade to which he belonged, within thirty days after such consolidation or alteration shall be published in general orders.

Supernume-
rary officers
to equip, &c.

§ 6. Supernumerary officers shall equip themselves, and those under rank of colonel shall attend the parades and drill trainings of the officers and non-commissioned officers.

Volunteer
companies,
how organiz-
ed.

§ 7. Whenever thirty persons, subject to military duty, associate together for the purpose of forming a company of mounted riflemen, infantry or artillery, by and with the consent of the commanding officer of their regiments, shall apply to the commander-in-chief to be organized as such, the commander-in-chief may so organize them, and such persons as a majority of the applicants shall have designated in their application shall be commissioned as the officers of such company. But no artillery company shall be organized by the commander-in-chief unless the commissary-general shall have on hand a proper piece of artillery and equipage ready to be delivered to such company.

1b.

§ 8. Every commanding officer of a regiment, before he shall consent to any such application, shall require satisfactory evidence that the persons making the same intend in good faith to serve when organized, and that they are of sufficient ability to equip themselves according to law.

When to be
reported,
number, &c.

§ 9. Every company of artillery, riflemen, light infantry, or mounted riflemen, which shall not at any annual inspection and review have at least thirty privates mounted, or armed and equipped as the law directs, shall be immediately reported by the inspector, or officer acting as such, to the commandant of the brigade to whom such company belongs.

Proof re-
quired.

§ 10. If thirty privates shall not so appear at such inspection and review, the inspector shall require proof that there are privates belonging to such company properly mounted, or armed and equipped, sufficient to complete the whole number of thirty; such proof may be made by the certificate on honor of a commissioned officer, or by the oath of a non-commissioned officer or private.

When o be
disbanded.

§ 11. The commandant of a brigade to whom a company shall be reported as deficient in number, shall thereupon disband the same in orders, unless he shall have reason to believe that such company will have thirty privates present and absent, mounted, or armed and equipped as aforesaid, at the next succeeding inspection and review.

1b.

§ 12. In case such company at the next inspection and review shall have absent and present the number above required, mounted, or armed and equipped, it shall not be disbanded, but if otherwise, the commandant of the brigade shall without delay disband the same.

Mounted ri-
flemen.

§ 13. All the companies of mounted riflemen and dragoons in each of the judicial districts of the territory, shall be formed into separate battalions, and the members of all such companies after they

shall have uniformed and equipped, shall be exempt from poll tax to work on the highways in their respective towns.

§ 14. All battalions of mounted riflemen, or dragoons, not formed into separate regiments, shall for all the purposes of this act be considered as a part of the regiments or separate battalions of infantry in the bounds of which they are situated. Considered part of infantry.

§ 15. All regiments and separate battalions of riflemen or artillery, not formed into brigades, shall for the purpose of this act be considered as a part of the brigade of infantry in the bounds of which the commanders of such regiment separate battalion shall respectfully reside. Ib. riflemen or artillery.

§ 16. No non-commissioned officer, musician, or private, belonging to any company of mounted riflemen, artillery, or light infantry, shall leave the company to which he belongs to serve as a fireman in any fire company now raised or hereafter to be raised in any city or county, nor shall he leave such company and enlist in any other, without the written consent of the commandant of the company to which he belongs, unless he shall have removed out of the district of such company. Person not to leave volunteer company.

§ 17. The commandant of every uniform company shall make a return without delay of all persons enlisted therein, to the commandant of the infantry companies within whose district the persons enlisted respectively reside, and in such return shall specify the date of each enlistment, and the commandant of infantry companies shall strike from their rolls the name of every person thus certified to have been enlisted in any regularly organized uniform company. Return of enlistment.

§ 18. All persons enlisted into any uniform company shall within three months from their enlistment furnish themselves with a uniform and other equipage, according to law; for non-compliance they shall be returned to the proper court-martial and fined as hereinafter provided. To equip.

§ 19. The commandant of any uniform company, whenever he shall discharge an able bodied man, shall give notice thereof in writing to the commandant of the infantry company, within whose district the individual discharged shall reside. Notice of discharge.

§ 20. The uniform of the infantry, or such portion thereof as the commander-in-chief may deem advisable, shall in his discretion be directed to conform with that which is now or may hereafter be established by the army regulations of the United States, and of all other corps for which provision is not made by the laws of the United States, as the commander-in-chief shall from time to time direct. Uniform.

§ 21. The militia of the territory shall as near as may be conform their system of discipline and exercise to that of the army of the United States, as is now, or shall hereafter be prescribed by the congress of the United States. Discipline.

§ 22. The commander-in-chief shall from time to time direct such book as to him shall appear expedient as a guide for the corps of artillery and mounted riflemen, and shall furnish the same to the field officers and commandants of companies of such corps at the expense of the territory. Ib.

§ 23. All mounted riflemen and dragoons, as well as all other independent or volunteer corps, shall be subject to be called into the service of the United States or of this territory, by companies, battalions, Volunteer companies, how called into service.

regiments or brigades, by order of the commander-in-chief, or other proper officers.

ARTICLE SECOND.

Of the organization of the staff department.

Aids, &c. of com. in chief. § 24. The commander-in-chief shall be entitled to four aids with the rank of colonel, and a military secretary with the rank of major.

Aids of major and brigadier-generals. § 25. Each major-general shall be entitled to two aids with the rank of major, and each brigadier-general to one aid with the rank of captain.

Adjutant-general. § 26. The adjutant-general shall have the rank of colonel, and in his department there shall be to each division a division inspector with the rank of lieutenant-colonel; to each brigade, a brigade inspector, to serve also as a brigade major, with the rank of major, and to each regiment and separate battalion an adjutant with the rank of lieutenant.

Judge advocates. § 27. In the judge advocate's department there shall be a judge advocate with the rank of colonel; to each division a division judge advocate with the rank of lieutenant-colonel; and to each brigade a brigade judge advocate with the rank of major.

Quarter-master-general and quarter-masters. § 28. In the quarter-master general's department there shall be a quarter-master general with the rank of colonel; to each division a division quarter-master with the rank of lieutenant-colonel; to each brigade a brigade quarter-master with the rank of captain; and to each regiment and separate battalion, a quarter-master with the rank of lieutenant.

Paymaster-general and paymasters. § 29. In the pay-master general's department there shall be a pay-master general with the rank of lieutenant-colonel; to each division a division pay-master with the rank of major; to each brigade a brigade pay-master with the rank of captain; and to each regiment and separate battalion, a pay-master with the rank of lieutenant.

Commissary-general. § 30. The commissary-general shall have the rank of colonel, and in his department there shall be so many military store-keepers, for the safe keeping and preserving of the arsenals, magazines, fortifications, and military stores belonging to this territory, as he may find it necessary to appoint, not exceeding one to each arsenal.

Surgeon-general, surgeon, &c. § 31. In the hospital department there shall be a surgeon-general with the rank of colonel; to each division a hospital surgeon with the rank of lieutenant-colonel; to each brigade a hospital surgeon with the rank of major; to each regiment a surgeon with the rank of captain; and to each regiment or separate battalion a surgeon's mate with the rank of lieutenant; but such rank shall not entitle officers to promotion in the line, nor regulate their pay or rations in the service.

Non-commissioned staff. § 32. There shall be to each regiment and separate battalion two sergeant-standard-bearers, one sergeant-major, one quarter-master-sergeant, one drum-major, and one fife-major, and to each regiment and separate battalion of mounted riflemen, one trumpet-major.

Chief of staff. § 33. The chief of each staff department shall, under the direction of the commander-in-chief, have command over all subordinate officers in his department, and shall from time to time issue orders and instructions for their government and practice.

§ 34. Each chief of such department shall prepare and transmit, ^{Forms.} at the expense of the territory, all blank forms of returns, precepts, warrants and proceedings necessary in his department.

TITLE V.

OF THE SEVERAL PARADES AND RENDEZVOUS OF THE MILITIA.

The militia shall rendezvous as follows :

§ 1. By regiments, or separate battalions, once in each year, be- ^{Times of pa-} tween the tenth day of September and fifteenth day of October, at ^{rade.} such time and place in their respective districts as the commanding officer of the brigade shall direct, for the purpose of inspection, review and martial exercise.

§ 2. At such other times and places, either by regiments, batta- ^{b.} lions or companies, as the case may require, as shall be directed in any order of proper authority, calling into service of the United States, or of this territory, the whole or any portion of the militia.

§ 3. It shall be the duty of all uniform companies to meet within ^{lb. uniform} [their] respective districts, in addition to the general rendezvous not ^{companies.} less than three nor more than eight days in each year, at such time and place as their respective commandants may direct, and as much oftener as a majority of all the members of their company may direct, for the purpose of drill and martial exercise.

§ 4. The commandant of each brigade shall give notice to the ^{Notice to be} commandant of the division of the times and places of the annual in- ^{given.} spection and review of the several regiments and separate battalions in his brigade.

§ 5. Each commandant of division shall attend the review and in- ^{Command-} spection of the several regiments and separate battalions of at least ^{ant of divi-} one of the brigades in his division in each year ; and he shall require ^{sion to at-} the officers of the division staff, armed and equipped as the law di- ^{tend.} rects, to accompany him ; he shall also attend such reviews and in- spections in each brigade of his division in succession.

§ 6. The commandant of each brigade shall attend, with the of- ^{lb. of bri-} ficers of the brigade staff, armed and equipped as the law directs, the ^{gade.} annual inspection and review of the several regiments and separate battalions in his brigade.

§ 7. The commissioned and non-commissioned officers and musi- ^{Officers to} cians of each regiment and separate battalions, shall rendezvous ^{meet for} within their respective districts not less than three nor more than six ^{drill.} days successively, between the first day of June and the first day of September in each year, for the purpose of disciplining and improv- ing in martial exercise. The day and place of rendezvous shall be prescribed by the commanding officer of the regiment or separate bat- talion.

§ 8. Such commandant shall report all absentees and deficiencies ^{To report.} to the president of the proper court-martial.

§ 9. For the purpose of warning the non-commissioned officers, ^{Warning.} musicians and privates, to any parade or place of rendezvous, requir- ed by law, the commandant of each company shall issue his war- rant, under his hand, to his non-commissioned officers, or to such of them as he may deem proper, requiring them respectively to warn all persons subject to military duty, within a certain district to be desig-

nated in such warrant, or all persons named in the warrant, as such commandant may elect, to appear at such parade or place of rendezvous, armed and equipped as the law directs.

Warning.

§ 10. Each non-commissioned officer to whom such warrant shall be directed, shall warn every person heretofore enlisted, whom he shall be therein required to warn, by reading the warrant or stating the substance thereof in the hearing of such person; or in case of his absence by leaving a notice thereof at his usual place of abode, with some person of suitable age and discretion, or affixing the same on the outer door of the house in case no person can be found therein; such notice shall be signed by the non-commissioned officer making the service, and so left or affixed shall have the like effect as if the person to whom the same shall be directed had been personally warned.

Return.

§ 11. Such non-commissioned officer shall deliver the warrant to his commandant, with a return, in which he shall state the names of all persons by him warned, and the manner of warning them respectively, and shall make oath to the truth of such return, which oath shall be administered by the commandant, and certified by him on the warrant or return.

To whom delivered.

§ 12. Such commandant shall deliver the warrant and return, together with his own return of all delinquents and delinquencies, to the president of the proper court-martial.

Made evidence.

§ 13. The return of such non-commissioned officer, so sworn to and certified, shall be as good evidence on the trial of any person returned as a delinquent, of the facts therein stated, as if such officer had testified to the same before the court-martial on such trial.

By commandant.

§ 14. Every commandant of a company shall make the like return upon honor, and with like effect, of every delinquency and neglect of duty of his non-commissioned officers, either in not attending on parade, or not executing or returning a warrant to them directed, or not obeying the orders of their commanding officer.

May warn without warrant.

§ 15. Any commissioned officer of a company, may, without a warrant, warn any or all the persons subject to military duty, within the district of the company, to appear at any parade or place of rendezvous; such warning may be given by him, either personally, or by affixing a notice in the same manner as if given by a non-commissioned officer, and his certificate upon honor shall be received by any court-martial as legal evidence of such warning.

Duty of inn-keepers.

§ 16. All tavern-keepers, keepers of boarding-houses, persons having boarders in their families, and house-keepers, upon their being thereto requested by the commandant of the company within the district of which they reside, or by the non-commissioned officer of any such company having a warrant from such commanding officer to warn persons to attend any parade, shall give to such commanding officer or non-commissioned officer, a true account of all persons lodging or boarding with them, and of their names, if known, to the end that such persons as are liable to do military duty, may be warned to rendezvous according to law.

Penalty.

§ 17. If any person of whom such account is so demanded, shall refuse to give such account and names, or shall wilfully give a false account, he shall forfeit and pay ten dollars, to be recovered by the commandant of the regiment for the use of the regiment.

§ 18. For the purpose of preserving order on the day of parade, the militia shall be considered to be under arms from the rising of the sun to its setting, on the same day, and shall be exempted from arrest on civil process during the time. Time of parade.

§ 19. Every commandant of a company, in addition to putting under guard as he is hereby authorized to do, and the exercise of the usual military power with which he is hereby vested, shall return to the president of the proper court-martial, the names of all persons in the company who shall have discharged any fire arms on such day of parade, without the order or permission of a commissioned officer, or officer acting under such; and also the name of every non-commissioned officer, musician or private, who shall on such day refuse or neglect to obey the order of his superior officer, or to perform such military duty or exercise as may be required, or depart from his colors, post or guard, or leave the ranks, without permission from his superior officer. Who returned to court-martial.

§ 20. The commanding officer of a division, brigade, regiment, or separate battalion, present at any parade, may put under guard any by-stander or spectator, who shall abuse, molest, or strike any one when on parade or under arms. Power of commandant

§ 21. The commanding officer of a regiment or separate battalion, shall on the day on which any parade or rendezvous is to be held, and previous thereto, cause the bounds of the parade ground to be designated in such manner as not to obstruct the passage of travelers on any public highway. Bounds of parade ground.

§ 22. If any person, during parade, shall encroach on the parade ground previously designated, or shall then and there sell, or offer to sell or give away, any spirituous liquors, without permission of the commanding officer, or shall have in his possession any gambling table or other gambling device, such persons may be put and kept under guard by such commander until the setting of the sun on the same day; and such liquor, gaming table, or other gambling device, may be abated or destroyed as a nuisance, by order of the commandant. Gamblers, &c. put under guard.

§ 23. No parade or rendezvous of the militia shall be ordered on any day during which a general or special election shall be held, nor within five days previous to such election, except in cases of invasion or insurrection, or of imminent danger thereof; and if any officer shall order any such parade or rendezvous, he shall forfeit and pay to the people of this territory the sum of five hundred dollars. No parade on election day.

§ 24. Every commandant of a company shall, within twenty days after any parade, furnish the president of the proper court-martial with a return of all persons belonging to his company, who shall have been at such parade delinquent in the performance of duty, or deficient in the equipment or uniform required by law, or who by any means shall have incurred any fine or penalties under this act. Delinquents to be reported.

§ 25. The commandant of every regiment or separate battalion, within fifteen days after the regimental or battalion parade or rendezvous of commissioned and non-commissioned officers and musicians, shall furnish the president of the proper court-martial with a return of all delinquents under the rank of a major in the staff or line.

Duty of officers in case of invasion.

§ 26. In case of any invasion, or of imminent danger thereof, within the limits of any division, brigade, regiment or separate battalion, it shall be the duty of the commandant of such division, brigade, regiment or separate battalion, to order out for the defence of the territory, the militia or any part thereof under his command.

1b. § 27. It shall also be his duty to give immediate notice of such invasion, and of the circumstances attending the same, to his immediate commanding officer, by whom such information shall be transmitted with the utmost expedition to the commander-in-chief.

1b. § 28. The commandant of every regiment or separate battalion, within the limits of which an insurrection may happen, shall immediately assemble his regiment or battalion under arms, and with the utmost expedition, shall transmit information of such insurrection to the commandant of his brigade, and to the commander-in-chief.

Persons disabled provided for.

§ 29. Every person who, while in the actual service of this territory, shall be wounded or disabled, in opposing or suppressing any invasion or insurrection, shall be taken care of and provided for at the expense of the territory.

Drafts, how made.

§ 30. Whenever the president of the United States, or the commander-in-chief, shall order a draft for [of] the militia for public service, such draft shall be made in each company in which it is required, by lot to be determined at a company parade ordered for that purpose.

1b. § 31. Each non-commissioned officer, musician or private, present at such parade, shall draw to make up the quota required, and each person drawn shall fill such grade in the militia drafted, as he was entitled to when drawn in his own company.

1b. § 32. One of the commissioned officers shall draw for every person subject to the draft who shall refuse to draw, or be absent from the parade, and such draft shall have the like effect as if the person so refusing or absent, had drawn himself.

Persons may offer substitute.

§ 33. Any person so drafted may offer a substitute at or after the time of rendezvous of the drafted militia, and such substitute, if he be an able bodied man of the age of twenty-one years, and shall consent in writing to subject himself to all the duties, fines, forfeitures and punishments, to which his principal would have been subject had he personally served, shall be accepted by the commandant of the company of drafted militia to which his principal may belong.

Distribution of arms.

§ 34. The commander-in-chief shall prescribe such rules, orders and regulations, relative to the distribution of arms, ammunition and military stores, to the militia when called into actual service as he may deem proper.

Persons may be put under guard.

§ 35. The commandant of companies are hereby authorized to put under guard, or to commit to prison for the day, and to return to the proper court-martial, any non-commissioned officer, musician or private, who shall appear on parade wearing any false face, personal disguise or other unusual ludicrous article of dress, or any arms, weapons, or other implements or things not required by law, and which are calculated to interrupt the peaceable and orderly discharge of duty.

1b. § 36. Any commissioned officer of division, brigade, regiment, separate battalion or company, present at any parade, is hereby authorized to put under guard, or to commit to prison for the day,

any person or persons, who shall upon or near any parade ground, field, public highway, or any other place occupied by the militia under arms, by means of ludicrous disguise, dress, arms and instruments, or by any other means disturb the peaceable and orderly proceedings of those under arms; and the jailer shall receive and confine such persons in the debtors department of the jail, pursuant to the order of commitment which shall be issued and delivered to him in virtue of this or the preceding section.

§ 37. It shall be the duty of each commandant of a regiment or separate battalion, within twenty days after the annual inspection, to furnish the commandant of his brigade a local description of such regiment or separate battalion, together with a roster of the commissioned officers of such regiment. Description of regiment.

§ 38. It shall be the duty of each brigade inspector, within thirty days after the annual review, in each year, to transmit to the adjutant-general a statement of the review, and inspection of the several regiments and separate battalions in his brigade, accompanied by the division and brigade staff armed and equipped as the law directs. Statement of review.

§ 39. In case any general officer, or any member of his staff, shall neglect to attend such inspection and review, it shall be the duty of the adjutant-general to require such officer to render an excuse, in writing, to the commander-in-chief, for his delinquency. If the commander-in-chief shall deem such excuse insufficient, he shall order a court-martial to try the delinquency. Duty of adjutant-general.

TITLE VI.

OF COURTS OF INQUIRY AND COURTS-MARTIAL.

ARTICLE FIRST.

§ 1. Courts of inquiry may be instituted by the commander-in-chief, or the commanding officer of division or brigade in relation to those officers for whose trial they are authorized to appoint courts-martial, for the purpose of investigating the conduct of any officer, either by his own solicitation or on a complaint, or charge of improper conduct, degrading to the character of an officer; or for the purpose of settling rank. Courts of inquiry.

§ 2. Such courts shall consist of not less than three nor more than five commissioned officers; and the president shall, without delay, report a statement of facts to the officer instituting such court, who may, in his discretion, thereupon appoint a court-martial for the trial of the officer whose conduct shall have been inquired into.

§ 3. Every court-martial for the trial of a major-general shall be ordered by the commander-in-chief, and shall consist of thirteen officers, any nine of whom shall constitute a quorum. Courts-martial.

§ 4. Every court-martial for the trial of a brigadier-general shall be ordered by the commander-in-chief, and shall consist of nine officers, any seven of whom shall constitute a quorum.

§ 5. All other courts-martial, for the trial of other commissioned officers, shall consist of seven officers, and [any] five of whom shall constitute a quorum, and shall be ordered, if for the trial of officers above the rank of captain, by the commanding officer of division, and for all other officers by the commanding officer of brigade.

Requisites
before trial.

§ 6. No officer arrested shall be brought to trial, unless a copy of the charges and specifications, certified by the officer ordering the arrest, shall be delivered to him, or left at his usual place of abode, within three days after his arrest; nor unless the officer ordering the court-martial shall have ordered the same within thirty days after receiving notice of the arrest and a copy of the charges and specifications; nor until ten days after a copy of a list of the names of the officers detailed to form the court shall have been delivered to the officer arrested, or left at his usual place of abode.

Vacancies.

§ 7. The officer ordering the court may at any time supply any vacancy that from any cause may happen therein.

Challenge.

§ 8. If the officer accused shall have any cause of challenge to the president he shall, within a reasonable time after receiving a copy of the charges, and a list of the members, deliver his cause of challenge, in writing, to the officer ordering such court, who shall thereupon determine as to the validity of such challenge; and if, in his opinion, the causes are sufficient, he shall appoint another president of such court.

Oath.

§ 9. After the court shall be assembled, and after all charges, [challenges] if any, are made, shall have been determined, the judge-advocate, whether commissioned or special, shall administer to each member the following oath: "You do swear that you will faithfully discharge the duties of a member of a court-martial now assembled, according to the best of your ability."

Sentence of
court, se-
cret.

§ 10. Every judge-advocate, whether commissioned or special, and every member of a court-martial, shall keep secret the sentence of the court until the same shall be approved, or disapproved, according to law, and shall keep secret the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice.

Limit of sen-
tence.

§ 11. The sentence of any such court-martial shall be according to the nature and degree of the offence, and according to military usage, but shall not extend further than cashiering the officer convicted, and disqualifying him from holding any office in the militia of this territory, and imposing a fine not exceeding one hundred dollars.

To whom to
be deliver-
ed.

§ 12. The proceedings and sentence of every such court-martial, shall, without delay, be delivered to the officer ordering the court, who shall approve or disapprove thereof within fifteen days thereafter, and shall give notice of his approval or disapproval to the president of such court-martial, and to the arresting officer, and he may at his discretion, publish the sentence, as approved or disapproved in orders.

Transmitted
to adjutant-
general.

§ 13. He shall also transmit, such proceedings and sentence, and his approval or disapproval thereof, to the adjutant-general, to be kept in his office.

Appeal.

§ 14. The right of appeal to the commander-in-chief, as it now exists by military usage, is reserved, but no appeal shall be received unless made within twenty days, after the decision appealed from is made known to the person appealing.

ARTICLE SECOND.

Of Regimental and Battalion Courts-Martial.

§ 15. The commandant of each regiment and separate battalion, shall, on or before the first Monday of June, in every year, appoint a regimental or battalion court-martial, to consist of three commissioned officers, one of whom shall be a field officer or captain, and shall be appointed president thereof. Court-martial, how composed.

§ 16. The officer appointing the court, shall fix the day on which it shall convene; and when convened, the court may adjourn from time to time, as shall become necessary for the transaction of business; but the whole session of the court, from the day on which it shall convene, shall not exceed one week. Time of convening.

§ 17. In case any vacancy shall happen in the court, or a new court shall be required, the officer ordering the court, or his successor in command, may fill such vacancy, or order a new court. Vacancy.

§ 18. The president and each member of such court, before he shall enter on his duties as such, shall take the following oath: Oath.

"I do swear, that I will well and truly try and determine, according to evidence, all matters between the people of the United States, and any person or persons which shall come before a regimental (or battalion) court martial of which I have been appointed president (or a member.)"

§ 19. Such oath shall be taken by the president, on or before the day on which the court shall convene, before a justice of the county in which he may reside, or a field officer of his regiment or battalion; and it shall be the duty of such justice, or field officer, to administer the oath without fee or reward. The president shall administer the oath to each of the members.

§ 20. The president of the court shall direct a non-commissioned officer, or other fit person or persons, to be by him designated, to summon all delinquents and parties accused, to appear before the court at a time and place to be by him appointed. Delinquents summoned.

§ 21. Such non-commissioned officer, or other person or persons so designated, shall make the like return, and with the like effect as commission and non-commissioned officers are authorized and required to make in cases of warning to a company, or regimental parade, and shall be subject to the like penalties for neglect of duty. Return of summons.

§ 22. The court, when organized, shall have the trial of all delinquents and deficiencies in the regiments or battalions for which it shall have been called, and shall have power to impose and direct to be levied all the fines to which commissioned officers of companies, and non-commissioned officers, musicians or privates are declared to be subject in [the] first article of the 6th title of this act. Jurisdiction of court.

§ 23. No fine, imposed by a regimental or battalion court-martial on a commissioned officer, shall prevent such officer from being tried and cashiered for neglect of duty by a court-martial, ordered by the commandant of his brigade. Officer cashiered.

§ 24. Every such court-martial may mitigate or wholly remit any penalty or fine, directed to be imposed for any deficiency, in arms or equipments of any delinquent in any company of infantry, whom the court shall adjudge to be so poor as not to be able to furnish himself with such arms or equipments. Remission of fine.

Appeal.

§ 25. From the sentence of any such court imposing a fine for any delinquency, an appeal, if made within twenty days, shall be allowed to the officer instituting the court, or to his successor in command, who may remit or mitigate such penalty or fine. In case the delinquent was not personally summoned to appear before such court, and did not appear, he shall have ten days, after personal notice of the sentence, in which to appeal from the decision of the officer instituting such court, or of his successor in command. An appeal, if made within ten days after personal notice of such decision, shall be allowed to the commanding officer of the brigade, who may remit or mitigate such penalty or fine.

ARTICLE THIRD.

General provisions applicable to all Courts-Martial and Courts of Inquiry.

Subpoenas for witnesses.

§ 26. The president of every court-martial, and of every court of inquiry, both before and after he shall have been sworn, and also the judge advocate, if required, shall issue subpoenas for all witnesses, whose attendance at such court, may, in his opinion, be necessary, in behalf of the people of the United States, and also an application for all witnesses in behalf of any officer charged or accused, or person returned as delinquent, and may direct the commandant of any company to cause such subpoena to be served on any witnesses residing within his district.

Oaths to witnesses.

§ 27. The president of such court-martial, or court of inquiry, shall have power to administer the usual oath to witnesses, and shall have the same power to compel attending witnesses to be sworn and testify, and to preserve order, as courts of common law jurisdiction; and all sheriffs, jailers and constables are hereby required to execute any precept issued by such president for that purpose.

Penalty for non-attendance.

§ 28. Every witness not appearing in obedience to such subpoena, when duly served, and not having a sufficient or reasonable excuse, shall forfeit to the people of this territory a sum not less than five or more than fifty dollars; and the president of such court shall from time to time report to the district attorney such offence, the name of all such delinquent witnesses, together with the names and places of the residence of the persons serving such subpoenas, the better to enable him to prosecute for such forfeiture.

Contempt, how punished.

§ 29. Any person or persons who shall be guilty of disorderly, contemptuous, or insolent behavior in, or use any insulting or contemptuous, or indecorous language, or expression to, or before any court-martial, or court of inquiry, or any member of either of such courts in open court, may be committed to the jail of the county in which such court shall sit, by warrant under the hand and seal of the president of such court.

Ib.

§ 30. Such warrant shall be directed to the sheriff, or any or either of the constables, or marshals of any such county, or any officer attending the court, and shall command the officer to whom it is directed to take the body of such person and to commit him to the jail of the county thereof, to remain without bail or mainprize in close confinement for a time to be limited, not exceeding three days, and until the officer's fees for committing, and the jailer's fees be paid.

§ 31. Such sheriff shall receive the body of any person who shall be brought to him by virtue of such warrant, and keep him until the expiration of the time mentioned in the warrant, and until the officer's and jailer's fees shall be paid, or until the offender shall be discharged by due course of law. Contempts, how punished.

§ 32. In the absence of the president of any court-martial, or court of inquiry, the senior officer present may preside, with all the powers of the president, and all the members of such courts shall, when on duty, be in full uniform. Senior officer, when to preside,

§ 33. The president of any court-martial, or court of inquiry, may appoint by warrant under his hand and seal, one or more marshals. Marshals.

§ 34. The marshal or marshals so appointed, may not only perform the usual duties of such marshals, but may also execute all process lawfully issued by such president, and perform all acts and duties in this act imposed on and authorized to be performed by any sheriff, marshal or constable. Their powers.

§ 35. Whenever the sentence of any court-martial shall be appealed from, the officer hearing the appeal shall require the president of the court-martial to furnish him forthwith with a statement of the case, and of the evidence touching the same, which statement and evidence shall, in case of an appeal to the commanding officer of the brigade, be forthwith, on notice of such appeal, transmitted to him. Evidence on appeal.

§ 36. Such statement be [being] furnished, the officer hearing the appeal shall require the president of the court-martial to furnish him forthwith with a statement of the case, and of the evidence touching the same, which statement and evidence shall, in case of an appeal to the commanding officer of the brigade, be forthwith, on notice of such appeal, transmitted to him. 1b.

§ 37. Such statement being furnished, the officer hearing the appeal may hear such further evidence by affidavit or otherwise, as the nature of the case may require; and for that purpose he shall have the power to administer the usual oaths to witnesses produced before him, except in cases where trials may have been had upon charges preferred. 1b.

§ 38. The two last sections shall extend to appeals made from the order of an officer approving the sentence of a court-martial. 1b.

TITLE VII.

OF PENALTIES, FINES, FEES AND EXPENDITURES.

ARTICLE FIRST.

§ 1. Every commissioned officer, for disobedience of orders, neglect of duty, unofficer-like conduct, or disrespect to a superior officer, shall be arrested and brought to trial before a court-martial, who may, on conviction, sentence him to be cashiered, incapacitated from holding any military commission, and fined to an amount not exceeding one hundred dollars, or may sentence him to any part of such penalties, or to be reprimanded in their discretion. Penalty on officers.

§ 2. Every commissioned officer refusing to pay over moneys in his hands as is directed in the second article of this title, shall be liable to be tried and cashiered, or otherwise punished therefor by a court-martial. 1b.

Officers and non-com. officers liable to fines.

§ 3. Every commissioned officer of a company, and every non-commissioned [officer,] musician and private shall, on due conviction, be subject for the following offences to the fines thereto annexed :

Non-attendance.

1st. Every non-commissioned officer, musician and private for non-appearance when duly warned or summoned at a company parade, a fine of one dollar ; at a regimental or battalion parade, or rendezvous of officers, not less than two nor more than four dollars ; and at a place of rendezvous when called into actual service, a sum not exceeding fifty dollars.

Desertion. &c.

2d. Every commissioned officer under the rank of colonel, for non-attendance at any parade, and every such officer, non-commissioned officer, musician, or private, for neglecting, or refusing to obey the orders of his superior officers on any day of parade, or to perform such military duty or exercise as may be required, or departing from his colors, post or guard, or leaving his place or rank without permission, a fine not more than fifteen nor less than five dollars.

Disobedience.

3d. For neglecting or refusing to obey any order, warrant, to him lawfully given or directed, or to make a proper return thereof, if such return be necessary, or making a false return, or neglecting or refusing when required to summon a delinquent before a court-martial, or duly to return such summons, a fine not more than twenty-five nor less than five dollars.

1b.

4th. Every commissioned officer for neglecting or refusing to act as such, when duly appointed, shall be sentenced to pay a fine not exceeding fifty dollars, and not less than five dollars. Every non-commissioned officer for neglecting or refusing to act as such when duly appointed, shall be sentenced to pay a fine not exceeding twenty dollars nor less than five dollars ; and every non-commissioned officer for neglect of duty, or unofficer-like conduct, in addition to other penalties, may be reduced to the ranks by the commandant of the company with the approbation of the commandant of the regiment or battalion.

Unofficer-like conduct

Discharging arms.

5th. Every non-commissioned officer, musician or private, who shall unlawfully discharge any fire-arms on the days of company or regimental muster, shall be sentenced to pay a fine of one dollar.

Want of equipments.

6th. Every non-commissioned officer and private appearing without being armed and equipped as the law directs, at any parade or rendezvous, shall be sentenced to pay the following fines, namely : for want of a sufficient sword and belt, if belonging to the artillery, and for want of a sufficient musket with a steel rod, or rifle, if belonging to a company of infantry, one dollar ; for want of a sufficient bayonet and belt, twenty-five cents ; for want of a pouch with a box therein sufficient to contain twenty-four cartridges, suited to the bore of his musket, twenty-five cents ; for want of two separate flints and knapsack, twenty-four cartridges, shot-pouch, powder-horn, twenty balls, and a quarter of a pound of powder, twenty-five cents each ; but the whole number of spare flints, of cartridges and of balls shall be considered each only one deficiency.

1b.

7th. The penalty imposed for want of bayonet, belt and cartridge-box, shall not apply to any non-commissioned officer or private of a rifle company, or to any private of any other company having a powder-horn and pouch.

8th. Each non-commissioned officer and private in a mounted rifle corps shall be sentenced to pay as fines, for want of a sufficient horse, two dollars; for want of a sufficient rifle and sling, one dollar; for want of sufficient pistol and belt, one dollar; for want of a sufficient saddle, bridle, breast-plate, valise, or cartridge-box, twenty-five cents each. Want of equipments.

9th. The court-martial by which any delinquent is tried, may excuse such delinquent if it shall be made satisfactorily to appear to the court that he has a reasonable excuse for such delinquency. Excuser.

10th. Any commissioned officer who shall retain a commission received by him for any subaltern, for more than thirty days without giving notice by mail or otherwise, to the person entitled to it, shall be liable to pay a fine not exceeding twenty-five dollars, to be imposed, in case of a commissioned officer of a company, by a regimental or battalion court-martial, on the complaint of any officer interested, and in case of a general or field officer, by a general court-martial, which shall be ordered on the like complaint. In addition to the penalties imposed by any of the provisions of this act, every commissioned and non-commissioned officer, musician and private of a company, who shall appear on parade wearing any personal disguise, or other unusual or ludicrous article of dress, or any arms, weapons, or other implements not required by law, and calculated to excite ridicule, or to intercept the orderly and peaceable discharge of duty by those under arms, shall be liable to a fine of not more than twenty-five nor less than five dollars, to be imposed by the proper court-martial. Penalty for retaining commission.

Disguise &c

§ 4. No action shall be maintained against any member of a court-martial, or officer, or agent acting under its authority, on account of the imposition of a fine, or the execution of a sentence on a person not liable to military duty, if such person shall have been returned as a delinquent, and duly summoned, and shall have neglected to show his exemption before such court. Action against member of court-martial.

ARTICLE SECOND.

Of the collection and application of penalties, fines and commutation money.

§ 1. All fines that shall be imposed by any regimental or battalion court-martial shall be reported by the president of the court to the officer ordering it, or to his successor in command, within twenty days after such fines shall have been imposed; and the officer ordering the court, or his successor in command, shall immediately after the time shall have elapsed in which appeals are allowed from his decision to the commandant of the brigade, give written notice to the president of the court of the penalties and fines which shall have been by him remitted or mitigated, and of the appeals which shall have been made from his decision to the commandant of the brigade. Fines to be reported.

§ 2. For the purpose of collecting fines the president of the court shall, within ten days after the receipt of the written notice aforesaid, make a list of all persons of whom fines are to be collected, designating the company to which they respectively belong, the sums imposed as fines on each person, and the person who shall have appealed to the commandant of the brigade; and shall draw his warrant un- How collected.

der his hand and seal directed to any constable of any city or county, as the case may be, thereby commanding him to levy such fine or fines, together with the costs, of the goods and chattels of such delinquents.

Fines, how collected.

§ 3. Every such constable to whom such list and warrant shall be directed and delivered, may execute the same by levying and collecting the fines in any city, town or county in this territory, and shall make return thereof within forty days from the receipt of such warrant to the president who issued the same; the execution of said warrant shall be suspended as to those persons who shall have appealed to the commandant of the brigade until the further order of such commandant.

Ib.

§ 4. If the constable shall not be able to collect the fines within the forty days aforesaid, then the president issuing the warrant may at any time thereafter, within two years from the time of imposing the fines, issue a new warrant from time to time, as may be necessary.

Ib.

§ 5. Any warrant for the collection of fines, issued by virtue of this act, shall and may be recovered in the same manner that executions issued from justices' courts may by law be recovered.

To whom paid.

§ 6. The moneys arising from fines imposed by any regimental or battalion court-martial, shall be paid by the officers collecting the same to the president of the court. The sureties which shall hereafter be given by any constable elect, shall be deemed liable to pay to the president of the court all such sums of money as the said constable may become liable to pay on account of any warrant which shall be delivered to him for collection.

Surplus.

§ 7. Such president, after deducting and paying the costs and fees properly chargeable on the fines so recovered by him, shall pay the surplus of such fines to the officer by whom the court shall have been ordered.

Money to be accounted for.

§ 8. Every such president shall from time to time, as often as he shall be required, furnish to the officer ordering the court, or to his successor in command, a correct statement of all moneys received by him on account of fines, and of all fines imposed; and it shall be the duty of the officer instituting every such court, or his successor in command, to make such request within thirty days after any such court shall be held.

Penalty.

§ 9. Whoever shall wilfully neglect or refuse to comply with such request for the space of ten days, shall be liable to be tried and cashiered therefor.

Marshals to be prosecuted.

§ 10. It shall be the duty of the respective presidents of courts-martial to prosecute in their own names any marshal or constable who shall incur any penalty for neglect in the execution or return of any warrant, or in paying over moneys collected by him.

Money how applied.

§ 11. The moneys arising from such penalties, when collected, shall be paid over and applied as other moneys payable to the commandants of regiments and separate battalions are directed to be paid over and applied in this article.

Fines how collected.

§ 12. All penalties and fines imposed by courts-martial upon commissioned officers, shall be collected by the attorney-general, or by the district attorneys of the counties in which the persons fined may reside, and be paid by the officer collecting the same into the treasury.

§ 13. All moneys received by each commandant of a regiment or separate battalion, shall be expended under the direction of the field officers and commandants of companies, in such regiment or battalion, and shall be applied in the first place to the purchase and repair of colors, and instruments of music, and the residue in disciplining and improving such regiment or battalion in such manner as a majority of the field officers and commandants of companies shall direct. Fines how expended.

§ 14. It shall be the duty of each commandant of a regiment or separate battalion to keep an accurate account of all moneys by him received and expended for the use of the regiment or battalion, and to exhibit such account on request, to any commissioned officer of his regiment or battalion; and to deliver it over to his successor in office. Accounted for.

§ 15. Each commandant of brigade shall examine and adjust the accounts of the commandants of regiments and separate battalions in his brigade, on or before the first day of May in each year. Accounts to be examined, &c.

§ 16. If the commandants of any regiment or separate battalion, shall neglect or refuse to pay moneys belonging to the regiment or battalion, as the field officers and commandants of companies shall have directed, the commandant of brigade shall sue in his own name for such moneys, and apply the same when recovered to the use of the regiment or battalion. Proceedings in case of neglect.

§ 17. It shall be the duty of the several officers to whom moneys are in this article directed to be paid, in case of the refusal or neglect of the person directed to account for and pay over such moneys, to sue for the same in their own names, but to the uses before specified, in an action for money had and received. Id.

§ 18. Every officer so suing may retain out of the money he shall collect, all necessary and reasonable expenses he may incur in such suits. Expenses of suits.

§ 19. It shall be no objection to any person called as a witness, or to serve as a juror in any action authorized in this article, that he is a member of the regiment or battalion that may be affected by such action. Jurors and witnesses.

ARTICLE THIRD.

Of the compensation and fees of the members of court-martial, and other officers.

§ 20. There shall be allowed and paid out of the treasury :

1st. To each division and brigade judge-advocate, and to each president and member of any court of inquiry, or court-martial for the trial of officers, two dollars for each day actually employed on duty; and the like compensation to any marshal or marshals appointed by such court, for every day employed in the execution of the duties required of him: Compensation. Judge-advocate, &c.

2nd. To such brigade-inspector, for inspecting a regiment or separate battalion, eight dollars; for attending each parade of commissioned and non-commissioned officers and musicians, which he is required by law to attend, eight dollars; for making out and transmitting to the adjutant-general an inspection return of his brigade, eight dollars: Brigade-inspector.

3rd. To each military store-keeper, such sum, not exceeding twenty dollars, as the commandant-in-chief shall think proper to allow. Military store-keeper.

Inspector
when paid.

§ 21. No payment shall be made to any brigade-inspector until he shall have furnished evidence to the auditor of his having made out and transmitted the inspection return of his brigade to the adjutant-general, and a copy thereof to his division-inspector; nor shall any payment be made to a division-inspector until he shall have furnished like evidence of his having made out and transmitted his division return to the adjutant-general, and the commandant of his division.

Compensation of members of courts martial.

§ 22. There shall be allowed and paid out of the fines imposed by each regimental or battalion court-martial, and received by the president thereof:

1st. To the president, one dollar and fifty cents for each day he may be actually employed in holding the court or engaged in the business thereof:

2nd. To each member of the court one dollar and fifty cents for each day he may sit as such member, or may be engaged in travelling to and from the court, allowing twenty miles for a day's travel:

3d. To the non-commissioned officer or other person who shall have summoned delinquents to appear before the court, one dollar and fifty cents for each day he may have been so necessarily employed, and the same sum for each day of his attendance on the court.

No other charges.

§ 23. No other sums or expenses whatever shall be charged on the fines received by the president of any such court, but the president, members and officers shall defray the expenses out of the fees allowed to them respectively.

Fees of constables.

§ 24. Each constable to whom a warrant for the collection of fines may be directed, shall be entitled to the same fees, and be subject to the same penalties for any neglect, as are allowed and provided for an execution issued out of justices' courts.

Of sheriffs.

§ 25. For all other service and commitments under this act, the sheriff, jailer and constables executing the same, shall be entitled to the like fees as for similar services in other cases.

Accounts audited.

§ 26. The accounts of all persons who, under this article, are entitled to be paid out of the treasury, shall be audited by the auditor; and all persons who are to be paid out of the fines imposed by a regimental or battalion court-martial, by the officer ordering the court.

Duty of auditor.

§ 27. The auditor, on the application of the governor, may draw his warrant on the treasurer for such sum of money as may be requisite in the execution of the provisions of this act, and may require the chief of each staff department to account quarterly for all moneys received by him for purposes connected with his department.

TITLE VIII.

OF THE DUTIES OF CERTAIN STAFF OFFICERS, AND OF VARIOUS MATTERS CONNECTED WITH THEIR RESPECTIVE DEPARTMENTS.

ARTICLE FIRST.

Of the Adjutant-General.

To keep roster.

§ 1. The adjutant-general shall keep a roster of all the officers of the militia of this territory, containing the corps to which they belong, the division, brigade, and regiment of such corps, and the places of their residence, as accurately as can be ascertained, which roster shall be revised and corrected every year.

§ 2. He shall also enter in a book to be kept for that purpose, a ^{Local description.} local description of the several regiments, brigades, and divisions of infantry, artillery and riflemen.

§ 3. It shall be the duty of the commandants of divisions and brigades to furnish the adjutant-general with a roster of their officers, ^{Duty of commandants of divisions and brigades.} containing the facts requisite to enable him to comply with the provisions of this article, and also a description of the regiments and brigades.

§ 4. The books required by the adjutant-general to comply with ^{Books.} this article, shall be furnished him at the expense of this territory, and shall go to his successor in office.

§ 5. It shall be the duty of the brigade-inspectors to transmit a copy ^{Duty of brigade-inspector.} of the inspection return annually to the adjutant-general, and duplicate of the same to the division-inspector, within thirty days after the inspection shall be made.

§ 6. The adjutant-general shall procure, at the expense of the territory, a seal with some proper device thereon, which shall be the seal of his office, and shall from time to time be delivered to his successor in office; and all copies of records or papers in his office, duly certified and authenticated under the said seal, shall be evidence in all cases in like manner as if the original were procured. ^{Seal.}

§ 7. The adjutant-general shall receive for his services, one hundred and fifty dollars per annum. ^{Compensation.}

ARTICLE SECOND.

Of the Commissary-General.

§ 8. The commissary-general shall keep in good repair the arsenals and magazines of the territory, and attend to the due preservation and safe keeping, cleaning and repairing of the ordnance, arms, accoutrements, ammunition, munitions of war and implements of every description, the property of this territory; and he shall at all times have the control and disposition of the same for that purpose. ^{Duty of commissary-general.}

§ 9. He shall dispose, to the best advantage, of all damaged powder, and of all arms, ammunition, accoutrements, tools, implements and warlike stores of every description whatever, that shall be deemed unsuitable for the use of the territory.

§ 10. He shall from time to time render a just and true account of all sales made by him, with all convenient speed, to the governor, and shall pay the proceeds of such sales into the treasury.

§ 11. Whenever the commanding officer of a brigade shall certify that a stand of colors, or any drum, fife or bugles, are necessary for any battalion in his brigade, the commissary-general, with the approbation of the commander-in-chief, shall furnish such battalion with a stand of colors, and a sufficiency of drums, fifes and bugles, at the expense of the territory; but no such drums, fifes or bugles shall be furnished to any brigade at an expense greater than the sum that shall have been theretofore actually paid into the treasury for fines in such brigade. ^{To furnish colors, &c.}

§ 12. The commissary-general shall issue the general allowance of powder and balls to artillery companies for practice, and the several commandants of artillery companies shall, annually, report to the commissary-general, the situation and state of the pieces of ordnance, ^{Powder and ball.}

arms, implements and accoutrements, the property of the territory entrusted to their charge, respectively.

Annual report.

§ 13. The commissary-general shall report annually to the commander-in-chief, whose duty it shall be to transmit the same to the legislature, a true and particular statement, showing the actual situation and disposition of all the ordnance, arms, ammunition and other munitions of war, property and things which in anywise appertain to, or respect the department confided to his keeping.

Account of expenses.

§ 14. He shall keep a just and true account of all the expenses necessarily incurred in and about his department, and once at least in every six months, deliver the same to the auditor, who shall thereupon examine and audit the same, and shall draw his warrant on the treasurer for such sum as he shall audit and certify to be due.

Act to take effect.

§ 15. This act shall take effect from and after its passage, and all laws contravening the same are hereby repealed.

AN ACT to provide for the appointment of a territorial treasurer, and to define his duties.

Appointment of treasurer.

§ 1. That the governor, with the advice and consent of the council, shall appoint a territorial treasurer, whose term of service shall be two years.

To take oath and give bond.

§ 2. That the treasurer, before he discharges any of the duties of his office, shall take an oath, before one of the judges of the supreme court, or a justice of the peace, to support the constitution of the United States, and that he will faithfully discharge the duties appertaining to his said office; and shall execute a bond to the people of the territory, with three or more sufficient sureties, in the penal sum of ten thousand dollars, subject to be increased to any amount, and at any time when the governor shall direct, conditioned for the faithful performance of his duties, and for the delivery over to his successor of all books, records and papers appertaining to his said office.

Approval of bond.

§ 3. That the bond of the treasurer shall be approved by the governor, and deposited in the office of the secretary of the territory; and if the conditions of the said bond shall at any time be broken, the governor shall cause suit to be instituted against said treasurer, and his sureties; nor shall one recovery render the same void, but the same may be prosecuted from time to time, until the whole penalty shall be recovered.

Moneys, how drawn.

§ 4. That no moneys shall be paid out of the territorial treasury, except on warrants drawn by the auditor; and it shall be the duty of the treasurer to pay all such warrants, out of any money in the treasury, and to give his receipt for all moneys paid into the territorial treasury; and to lay before the legislature, at its annual session in each year, a true and exact statement of the balance in the treasury, with the summary of the receipts and payments of the treasury during the preceding year; and to perform such other duties as are or may be prescribed by law.

To make statement.

Salary.

§ 5. That there shall be allowed, annually, to the treasurer of this territory, the sum of sixty dollars, in full compensation for all his services.

Returns, how made.

§ 6. That in all cases in which a return is required to be made by any officer to the treasurer of the territory, within any limited time, it

shall be sufficient to deposite the same in a post-office, directed to the treasurer at the seat of government, within the time so limited.

§ 7. The treasurer shall keep his office at the seat of government. Office where kept.

AN ACT relative to the office and duties of the auditor of the territory of Wisconsin.

§ 1. The governor, with the consent of the council, shall appoint an auditor of public accounts, whose term of service shall be three years, unless sooner removed. Auditor, how appointed.

§ 2. That the auditor, before he discharges any of the duties of his office, shall take an oath, before one of the judges of the supreme court, to support the constitution of the United States, and for the faithful performance of the duties of said office; and shall moreover, execute a bond to the people of this territory, with two or more sufficient sureties, in the penal sum of five thousand dollars, conditioned for the faithful discharge of the duties of the said office of auditor, and for the delivery to his successor of all books, records, vouchers and papers appertaining to said office. Oath and bond.

§ 3. That the bond executed by the auditor, when approved by the governor, shall be filed in the office of the secretary of the territory; and if any of the conditions of said bond are at any time broken by said auditor, the governor shall cause suit to be instituted thereon, against him and his sureties. Bond to be filed.

§ 4. That it shall be the duty of the auditor to examine, adjust and settle the accounts of all persons indebted to the territory; and to keep an account between this territory and the treasurer thereof, and therein charge him with the balance in the treasury, and with all moneys received by him, and credit him with all warrants drawn upon him; and to exhibit to the legislature, annually, a complete statement of the funds of the territory. Duties.

§ 5. That no moneys shall be paid out of the territorial treasury, except on warrants of the auditor; and all receipts for money hereafter to be paid to the treasurer shall be taken to the auditor, who shall countersign the same, and enter them in a book to be kept in his office for that purpose, to the credit of the person by whom such payment shall be made; and no receipt, unless it be so countersigned, shall be evidence of such payment. Warrants on treasury, &c

§ 6. That in all cases where warrants are issued by the auditor, upon the treasurer, the said warrants, before they are delivered to the person for whose benefit the same were drawn, shall be presented by the auditor to the said treasurer, who shall countersign the same, and shall enter in a book to be kept for that purpose, the date, amount and name of the person or persons to whom the same are made payable. Warrants to be countersigned.

§ 7. That it shall be the duty of the auditor to prosecute, in the name of this territory, all delinquent collectors of territorial revenue, and to perform such other duties as are or may be prescribed by law. Collectors to be prosecuted.

§ 8. That there shall be allowed, annually, to the auditor of this territory, the sum of sixty dollars, in full compensation for all his services. Salary.

§ 9. The auditor shall keep his office at the seat of government of the territory. Office where kept.

AN ACT to provide for the appointment of a librarian, and for other purposes.

Librarian,
how appoint-
ed, &c.

§ 1. That the governor shall nominate, and by and with the advice and consent of the council, appoint a librarian, who shall take an oath of office, and shall also give bonds to the treasurer of the territory, in the sum of one thousand dollars, for the faithful performance of his duties, and whose term of service shall continue two years, or until another be appointed.

Duties.

§ 2. That as soon as the public buildings shall be completed, in the town of Madison, county of Dane, and be accepted by the commissioners appointed by the legislature to superintend the erection of the public buildings, it shall be the duty of the said librarian to take possession of said building, and preserve the same; he shall also take charge of the books, furniture, and other property appertaining to the legislative assembly, and carefully preserve the same; and in the execution of his duties he shall be governed by such instructions as he may from time to time receive from the governor, or from the legislative assembly.

Salary.

§ 3. That the librarian shall annually receive for his services, the sum of three hundred dollars, payable quarterly by the secretary of the territory, out of the fund appropriated by congress for the contingent expenses of the legislative department of the territory.

To provide
room, &c.

§ 4. The librarian shall provide in Madison, the seat of government, a proper room for the safe keeping of the books, papers and documents, belonging or appertaining to the territorial library, and which shall be intrusted to his care; he shall keep a register, in which he shall enter the name of every person to whom he shall deliver any book, paper or documents, the time when the same was delivered, when returned, and the title of the work and number of volumes delivered.

Access to
library.

§ 5. The members of the council and house of representatives and their officers, the governor of the territory, the judges of the supreme court, the secretary of the territory, the United States attorney of the territory, the attorney-general of the territory, the marshal of the territory, the delegate in congress from the territory, ex-members of the legislative assembly, and the clerk of the supreme court, shall have full access to the library during regular hours of the day.

Strangers
admitted.

§ 6. Strangers may be introduced to the library by the governor, secretary of the territory, judges of the supreme court, or members of either branch of the legislative assembly.

Number of
books to be
taken out.

§ 7. Any person having the privilege of the library, may take therefrom any number of volumes not exceeding the number of five, for his own use, and shall be accountable to the librarian for the return of the same in good order; no person shall be permitted to take more than one volume of Revised Statutes from the library at any one time, nor to retain the same for a longer period than two days.

Limitation
and penalty.

§ 8. No person shall be allowed to keep in his possession any work belonging to the library a longer period than five days, under a penalty of twenty-five cents for each day; and in case any volume shall be lost or damaged, the volume so lost, or the actual damage done, the person by whom said volume is lost or damaged, shall pay the original cost of said volume or volumes, with fifty per cent in

addition : any of the above named fines shall be paid to the librarian, who is hereby authorized to receive the same, and shall account therefor : *And be it further provided*, That any person who shall refuse to pay for any book, together with any of the above named fines, at the time demanded by the librarian, shall not be allowed to take any books from the library until the fine is paid, and the fine shall be recovered in the name of the territory before any justice of the peace, for the use of the territory.

§ 9. The library shall be open for the accommodation of all privileged members, from the hours of nine to twelve, A. M. and from two to nine, P. M. during the session of the legislative assembly; in the recess of the legislative assembly, the time shall be regulated by the librarian. Library, when open.

§ 10. The librarian shall have authority to appoint an assistant librarian, who may perform the duties assigned to the librarian, and for whose acts the librarian shall be personally responsible. Assistant.

§ 11. The librarian shall, at the commencement of every session, report to the council and house of representatives, a list of books or other property missing, if any, of the library, together with such other information in relation to said library as the librarian may deem important. Annual report.

§ 12. The librarian shall, at the close of the session, report to the council and house of representatives, a true account of all the expenses incurred during the session, for rent of room, fuel, candles, stationery, wood, and other incidental expenses, which shall be paid out of any moneys appropriated by congress to defray the expenses of the legislative assembly. ib.

§ 13. *Be it further provided*, That it shall be the duty of said librarian to contract, annually, for the delivery of the necessary amount of wood, stationery, and candles, required for the use of the legislative assembly. Stationery.

AN ACT concerning the appointment of public administrators, and their duties.

§ 1. There shall be appointed in each of the organized counties, on the nomination of the governor, by and with the advice and consent of the council, a suitable person to be known as the public administrator of the county for which he may be appointed. Public administrator, how appointed.

§ 2. When any person shall die intestate, having goods and chattels, rights or credits, in this territory, and no widow, next of kin or creditor, shall be living within the territory, administration of such intestate's estate shall be granted to the public administrator of the county in which such intestate died, or if the intestate be a non-resident in the county in which the goods, chattels, rights and credits may be found. Administration to be granted.

§ 3. Every public administrator, before entering upon any of the duties of his office, shall be sworn well and faithfully to perform all such duties as may be required of him by law, according to the best of his ability, which oath shall be endorsed on his commission, and recorded in the probate office of the county for which he may be appointed; he shall also give bond with two or more sufficient sureties, Oath and bond.

in such sum as the judge of probate shall limit and appoint, which shall be in the following or its equivalent form :

Form of
bond.

Know all men by these presents, that we, A. B., C. D. and E. F., of the county of _____ and territory of Wisconsin, are held and firmly bound unto the people of the territory of Wisconsin, in the penal sum of _____ thousand dollars current money of the United States, which payment well and truly to be made and performed, we, and each of us, bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, and firmly by these presents, as witness our hands and seals this _____ day of _____

The condition of this obligation is such, that whereas the said A. B. has been appointed public administrator in and for the county of _____ : Now, if the said A. B. as such public administrator, shall well and truly administer all such goods, chattels, rights, credits and assets, as shall come to his hands or possession, or to the possession of any other person for him, and which may belong to the estate or estates, of any person or persons, upon which administration may at any time be granted to him by the court of probate of said county of _____, and do make or cause to be made, a true and perfect inventory of the goods, chattels, rights, credits and assets, of all such deceased persons, the administration of whose estates shall be committed to him, as aforesaid, and the same so made doth exhibit in the said court of probate, when he shall thereunto be required by law, and do make and render a just account of all his acts and doings as such, in each separate estate, to the court of probate of the proper county when required so to do, and shall do and perform all such other duties as may from time to time be required of him by law, then the above obligation to be void, otherwise to remain in full force and virtue.

Approval,
&c.

§ 4. The bond so given shall be approved by the judge of probate, and filed in his office; and the said judge may require such administrator to give additional or new bonds whenever he may deem the security of any estate shall require it.

When let-
ters revoked.

§ 5. In all cases where administration shall have been granted to any public administrator, and it shall afterwards appear that there is a widow, next of kin or creditor entitled to such administration, it shall be the duty of the judge of probate to revoke the letters of administration granted to such public administrator, and to grant administration to such widow, next of kin or creditor, according to law : *Provided*, That the application for letters shall be made by such person to the court of probate, within six months after the granting of letters to such public administrator.

Expenses.

§ 6. In case letters granted to any public administrator shall be revoked, it shall not impair his right to receive from the estate such necessary expenses as he may have incurred therein, to be determined and allowed by the judge of probate.

Estate not
claimed,
how dispo-
sed of.

§ 7. The balance of any intestate estate administered upon by any public administrator after payment of all just debts and charges and the expenses of administration, shall be retained by such administrator for the space of six months, and at the expiration thereof he shall cause a notice to be published in some newspaper in the territory, stating the name of the deceased, the time of his death, and that all persons having claims or demands against such estate must exhibit

the same, duly authenticated, before the judge of probate of the proper county within six months from the date of such notice; and if no such claim be presented within the said six months, such balance shall be paid into the county treasury, and the county shall be liable to pay the same to any person entitled thereto, if the same shall be claimed within twenty years.

§ 8. Upon the death of any person intestate, not leaving a widow, next of kin or creditor to whom administration may be granted, it shall be lawful for the public administrator to take measures to protect and secure the property and effects of such intestate from waste and embezzlement, until administration thereon shall be granted. Property protected from waste.

§ 9. The public administrator shall be liable in the same manner and to the same extent, that executors and administrators are by law liable for waste, mismanagement or neglect of duty on the complaint of any citizen of the county, and shall have like powers in the settlement of estates which may be committed to his administration. Liabilities.

§ 10. No creditor shall be entitled as such, to letters of administration, unless his debt or demand against the estate, shall amount to at least one-tenth of the value of the estate of the intestate. Creditor not entitled to letters unless, &c.

AN ACT concerning notaries public.

§ 1. One or more notaries public shall be appointed in each of the organized counties of this territory, who shall exercise said office for and within the county, in which he resides, and the counties thereunto attached for judicial purposes. Notaries public.

§ 2. Each and every notary public, before he enters on the duties of his office, shall take an oath to support the constitution of the United States, and for the faithful discharge of the duties of his said office; and shall give a bond to the governor, with sufficient surety in the penal sum of five hundred dollars, conditioned for the discharge of the duties of his said office: *Provided*, That nothing in this act shall be construed to remove notaries public now in office. Oath and bond.

§ 3. Whenever the office of any notary public shall become vacant, the records of said notary public, together with all the papers relating to the office, shall be deposited in the office of the clerk of the district court, in the county in which the said notary public resides; and any notary public who, on his resignation or removal from office, shall neglect to deposite such records and papers in the clerk's office as aforesaid, for the space of three months, shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars; and if any executor or administrator of any deceased notary public shall neglect to lodge such records or papers, as aforesaid, which come into his hands, in the clerk's office, for the space of three months, after the acceptance of that trust, he shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars; and if any person shall, knowingly, destroy, deface or conceal, any records or papers of any notary public, he shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars, and shall be, moreover, liable to an action for damages by the party injured. When office vacant, papers where deposited. Penalty for neglect.

To notify
maker, &c.

§ 4. It shall be the duty of each and every notary public, when any bill of exchange, promissory note, or other written instrument shall be by him protested, for non-acceptance, or non-payment, to give notice, in writing, thereof to the maker, and each and every endorser, of a bill of exchange; and to the maker or makers of, and each and every security or endorser of any promissory note, or other written instrument, immediately after such protest shall have been made.

Notice, how
given.

§ 5. It shall be the duty of every notary public, personally, to serve the notice upon the person or persons protested against: *Provided*, he or they reside within two miles of the residence of such notary public; but if such person or persons reside more than two miles of [from] such residence, the said notice may be forwarded by mail or other safe conveyance.

Record of
notices.

§ 6. Each and every notary public shall keep a record of all such notices, and of the time and manner, in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument protested; which record shall, at all times, be competent evidence to prove such notices, in any trial before any court in this territory, where proof of such notice may become requisite.

Clerk of dis-
trict court to
keep re-
cords.

§ 7. It shall be the duty of the several clerks of the district courts to receive and keep safe all the records and papers directed by this act to be deposited in their office, and give attested copies of any of said records or papers, when required; and copies so given by the said clerk are hereby declared to be as valid as if the same had been given by the said notaries public: All forfeitures under this act shall be, one half to the use of this territory, and the other half to him or them who shall sue for the same, to be recovered in an action of debt in any court having jurisdiction of the same, in the county where such notary public shall reside.

Faith to be
given to pro-
tests, &c.

§ 8. Full faith and credit shall be given to all the protestations, attestations and other instruments of publication of all notaries public now in office, or hereafter to be appointed under the provisions of this act.

AN ACT concerning the clerks of courts.

Clerk of su-
preme
court.

§ 1. There shall be appointed a clerk of the supreme court by the judges of the same court, or a majority thereof in writing under their hands and seals, who shall hold his office during the pleasure of the court, and until his successor shall be appointed and qualified.

To give
bond.

§ 2. Before entering on the duties of his office, he shall give bond to the treasurer of the county in which he resides, to be approved of by said treasurer, in a sum not less than one thousand dollars, with one or more sufficient sureties, conditioned for the faithful discharge of the duties of his office.

Oath.

§ 3. He shall also be sworn by any officer authorized to administer oaths to support the constitution of the United States, and for the faithful discharge of all his said duties, which oath shall be endorsed on his appointment, signed by him and filed in his office.

Office,
where kept.

§ 4. He shall reside and keep his office at the seat of government. His office shall be kept open every day in the year, except Sundays,

and the day celebrated as the anniversary of American independence, from nine to twelve o'clock A. M., and from two to five o'clock P. M.

§ 5. He shall appoint in writing under his hand and seal some competent person to be his deputy, for whose acts and doings he shall be liable. The deputy shall take the same oath required to be taken by the clerk. In the absence of the clerk from the clerk's office, or from the court, the deputy shall be authorized to execute and perform all the powers and duties of the clerk, until he shall return to the duties of his office, or another shall be appointed and qualified. Deputy.

§ 6. There shall be appointed in each organized county a clerk of the district court for the same county, by the judge of the district in which such county is situated, in writing, under his hand and seal. Clerk of district court.

§ 7. The clerks of the district courts shall take the same oath, give the same approved bond, and appoint deputies in the same manner as required of the clerk of the supreme court. Oath and bond.

§ 8. The deputy clerks of the district courts shall have the same powers and duties as the deputy clerk of the supreme court, and the clerks of the district courts shall be liable for all their acts and doings. Powers and deputy.

§ 9. The several clerks already appointed, shall take the oath and give the bond required by this act, within twenty days after notice that this act is in force. Present clerks to take oath.

AN ACT concerning sheriffs.

§ 1. There shall be appointed in each of the organized counties in this territory, a sheriff, who shall hold his office for three years, unless sooner removed, who shall, previous to entering upon the duties of his office, take an oath to support the constitution of the United States, and faithfully to execute the duties of his office. Sheriff.

§ 2. Every person so appointed, before he shall be qualified to execute the duties of his office, shall enter into bonds to the United States in the penal sum of four thousand dollars, with two sureties being freeholders, to be approved of by the clerk of the district court and judge of probate of the same county, or they shall swear before some supreme court commissioner that they are each worth the sum of two thousand dollars over and above all just debts, conditioned to answer to the United States, and to the parties, if any, who will complain; which bond shall be in substance as follows: To give bond.

Know all men by these presents, that we of are Form of bond.
held and firmly bound unto the United States in the penal sum of four thousand dollars to be paid the United States; for the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, dated this day of A. D. 18 . Whereas the above bounden hath been appointed to the office of sheriff of the county of on the day of last past, now the condition of the above obligation is such, that if the said shall well and faithfully in all things perform and execute the office of sheriff of the county of during his continuance in the said office by virtue of the said appointment, without fraud, deceit, or oppression, then the above obligation to be void, or else remain in full force. Additional security.
Provided, however, that the county commissioners in each of the

organized counties of this territory, shall have the power, whenever in their opinion the public interests require it, to compel the sheriff to give additional security, not exceeding in the whole the sum of ten thousand dollars. And the said bonds shall be filed in the clerk's office of the counties respectively for which such sheriff shall be appointed; and the said clerks respectively shall, at the time of filing such bonds, administer an oath to each of the sureties named therein, that he is a freeholder within this territory, and worth the sum of two thousand dollars over and above all debts, which oath shall be endorsed on the said bonds and subscribed by the sureties respectively in the presence of the clerk.

Oath endorsed on bond.

§ 3. In case the said sureties shall have justified before a supreme court commissioner, then the oath shall be endorsed on the bond and subscribed in the same manner as above specified.

Neglect deemed refusal.

§ 4. In case any person receiving the appointment of sheriff shall neglect to enter into bond with sureties as aforesaid, for the space of twenty days after notice shall be given to him of his appointment, every such person shall be deemed to have refused to accept the said office, and it shall be the duty of the clerk of the county in which such neglect shall happen, forthwith after the expiration of said twenty days, to give notice thereof by letter to the person administering the government of this territory.

Duties.

§ 5. It shall be lawful for every sheriff who shall be appointed and commissioned and take upon himself the office, to continue in and execute all the duties of said office until a new sheriff shall be appointed and commissioned in his place, and properly qualified.

To appoint deputy.

§ 6. The sheriff of each county in this territory shall, as soon as may be after he has taken upon himself the office, by writing under his hand and seal, make some proper person under sheriff of the same county, who shall also be his deputy during the pleasure of the said sheriff; and as often as such under sheriff shall die or be removed from his office, or remove out of the county, or from any cause be incapable of executing the duties of his office, another shall be appointed in his place in the manner aforesaid, and every such appointment shall be recorded in the office of the clerk of the proper county; and in case of the death or absence of the sheriff of any county, the under sheriff of the same county shall in all things execute the office of sheriff of such county in the name of the deceased or absent sheriff, until the sheriff shall return, or another shall be appointed, commissioned and qualified to discharge the duties of the office; and the default and misfeasances in office of such under sheriff in the meantime, as well as before, shall be adjudged a breach of the condition of the bond and security given by the sheriff who appointed him, and the executors and administrators of the deceased sheriff shall have the like remedy for the default and misfeasances in office of such under sheriff, happening during such interval, as such sheriff would be entitled to, if he had lived and continued in the exercise of his office, until his successor was appointed and commissioned, and had taken upon himself the said office; and in case there shall be no such under sheriff of any county at the time of the death of the sheriff of such county, or if such under sheriff shall die or remove out of the county, or become incapable of executing the office before another sheriff of the same county shall be appointed, commissioned and duly qualified, then

Coroner to act.

and in every such case the coronor of such county shall in all things execute the office of sheriff of the same county until a sheriff thereof shall be appointed, commissioned and qualified.

§ 7. Every sheriff may appoint such and so many deputies as he may think proper, for whose official acts he shall be responsible, and the default and misfeasances in office of such deputies, shall be adjudged a breach of the condition and security given by the sheriff. The appointment of deputies shall be made in the same manner and filed at the same place as the appointment of the under sheriff. Such deputies shall take an oath for the faithful discharge of their duties. But no person who may be deputed by the sheriff, to do a particular act only, shall be required to take the above oath. Deputies.

§ 8. Whenever any under sheriff, coronor or other person, shall execute the office of sheriff, the person so executing such office shall be subject to all the liabilities and penalties imposed by law on a sheriff duly appointed and qualified. Liabilities of coroners.

§ 9. Every sheriff shall have the custody of the jails and prisons in his county and the prisoners in the same, and shall appoint keepers thereof, for whose conduct he shall be responsible. Custody of prisoners.

§ 10. It shall be the duty of the sheriffs to keep and preserve the peace in their respective counties, and it shall also be their duty to quiet and suppress all affrays, routs, riots, unlawful assemblies and insurrections, for which purpose they are empowered to call to their aid such persons or power of their respective counties as they may deem necessary; they shall also pursue and apprehend all felons, they shall execute all warrants, writs and other process, which may by law appertain to the duties of their office, including all warrants, writs and other process from a justice of the peace, which shall be directed to them by legal authority, and they shall attend upon the district court held within their respective counties during their session. Sheriffs to preserve the peace, &c.

§ 11. Every sheriff or any other officer to whom any writ or other process shall be delivered in the county where it is to be executed, shall, if required by the persons delivering the same, give to such person a certificate under his hand, without taking any thing therefor, wherein the names of the parties and the day of delivering the writ or other process shall be mentioned; and when any writ or other process shall be returned, the sheriff or other officer who shall make the return, shall put his own name to the return of the same; and if any sheriff or other officer, shall not make due return to any writ or other process delivered to him to be executed, he shall not only be liable to attachment or amercement at the discretion of the court where such writ or other process shall be returnable, but also to an action on the case to the party aggrieved, and such sheriff or other officer shall be in like manner responsible if, when commanded to answer of the issues of any lands or chattels, he returns less than he might or ought to have returned, and shall, upon motion in open court by the party aggrieved or his attorney, be amerced in the amount collected, or which ought to have been collected, either upon the said issues or upon any writ, together with the per centum thereon, to the use of the said party. To give certificate in certain cases.

§ 12. When the sheriff or any of his deputies shall find that resistance will be made against the service of any process, the sheriff, laying aside all other things and taking with him the power of the coun- When resisted.

ty, shall forthwith go in his proper person and cause the process to be served, and if he find resistance he shall certify to the court the names of the persons so resisting, aiding or favoring such resistance.

Duty when
person in
custody.

§ 13. If any sheriff or other officer shall have in his custody any person, by virtue of any process or warrant whatsoever, it shall not be lawful for such officer to carry the said person to any tavern without the voluntary consent of said person, so as to charge such prisoner with any sum of money for any drink, victuals, or other things whatsoever, but what the said person shall call for of his own accord; and such officers shall not directly or indirectly demand, take or receive, any other or greater sum, than what by law ought to be taken for such arrest, taking or awaiting until such person shall have procured an appearance, found bail, agreed with his adversary, or be sent to jail; and any sheriff or other officer or person having the custody of a prisoner arrested on civil process, shall permit him at his own will, to send for and have any small beer, victuals, or any other articles of comfort, except ale, wine or ardent spirits, when and from whom any such person pleases, and to have and use such bedding, linen and other furniture as such prisoner shall think fit, without any detaining or paying for the same, and shall not demand, take or receive of such prisoner any other or greater fees for his commitment, release or discharge, than shall be allowed by law, nor any thing whatsoever for the chamber rest of such prisoner.

Duty of
jailer.

§ 14. Every jailer upon whom any declaration, notice, or any other proceeding directed to any prisoner in his custody shall be served, shall within five days thereafter, deliver the same to the defendant, with a note of the time of service thereof, upon such jailer, and if any jailer shall neglect to deliver the declaration as aforesaid, he shall be answerable to such defendant for all damages occasioned by such neglect.

Sheriffs
debarred
holding
other office.

§ 15. Sheriffs can hold no other civil office, except marshal or deputy-marshal, and they and their deputies are not allowed to practice in any court of which they are officers, as attorneys, solicitors or counsellors.

May pass
through
other coun-
ties.

§ 16. Any sheriff or other officer who shall have arrested any prisoner in any county, may pass over, across and through, such parts of any other county or counties, as shall be in the ordinary route of travel from the place where such prisoner shall have been arrested, to the place where he is to be conveyed and delivered, according to the command of the process by which such arrest shall have been made.

Conveyance
not deemed
escape.

§ 17. Such conveyance shall not in any case be deemed an escape, nor shall the prisoner so conveyed, or the officers having him in their custody, be liable to arrest on any civil process while passing through such other county or counties.

Duty of
jailer.

§ 18. It shall be the duty of the keeper of every jail to present to every district court held in his county, at the opening of such court, a calendar, stating,

1st. The name of every prisoner then detained in prison.

2d. The time when such prisoner was committed, and by virtue of what process or precept; and

3d. The cause of the detention of every such person.

Sheriff not
to take
bonds.

§ 19. No sheriff or other officer shall take any bonds, obligation or security, by color of his office, in any other case or manner, than such

as are provided by law, and any such bond, obligation or security, taken otherwise than as herein directed, shall be void.

§ 20. No sheriff, by color of his office, shall directly or indirectly ask, demand or receive, for any services or acts to be by him performed, in pursuance of any duty of his office, any greater or more fees than are allowed by law, on pain of forfeiting for every such offence, to the party aggrieved, his treble damages, to be recovered with costs of suit; and also the sum of two hundred and fifty dollars, the one moiety thereof to this territory, and the other moiety to the party who shall sue for the same, to be recovered with costs of suit in any court of record having cognizance thereof, by action of debt. Unlawful fees forbid.

AN ACT concerning coroners and constables.

§ 1. That there shall be elected in each of the organized counties in this territory, a coroner, whose term of service shall be for two years, and whose duty it shall be to execute all process in their respective counties, in all cases when just exception can be taken to the sheriff or his deputy, or when there is no sheriff, and in all cases upon affidavits being made and filed in any court of record in this territory, of the partiality, prejudice, consanguinity or interest, of the sheriff, or of the deputy of the sheriff of any county, when suit is about to be brought, or shall have been commenced, it shall be the duty of the clerk to issue and direct original or other process in the suit, to the coroner, who shall execute the same, and attend to the same throughout, in the same manner as the sheriff could or ought to have done; and hereafter the partiality, prejudice, consanguinity or interest, of the sheriff, or deputy-sheriff, shall not be cause for a change of venue, but the coroner shall perform the duties above described; or if there should be no coroner, some proper person to be appointed by the clerk, shall supply the place of the sheriff in like manner as the coroner is hereby required to do: *Provided*, That when the coroner is required to discharge the duty of sheriff, he shall execute such bond and security as the clerk may require. Coroners, how elected, &c.

§ 2. That coroners shall take inquest upon the view of the dead bodies of such persons only as shall be supposed to have come to their death by violence, and not when the death is believed to have been, and was evidently, occasioned by casualty. To take inquests.

§ 3. That as soon as any coroner shall have notice of the dead body of any person supposed to have come to his death by violence, found or lying within his county, he shall make his warrant to the constable of the town where such dead body is, or of one of the adjoining towns in the same county, requiring such constable forthwith to summon six good lawful men of the county, to appear before such coroner, at the time and place expressed in such warrant; and the warrant may be issued with or without a seal, and in substance as follows: To summon jury.

TERRITORY OF WISCONSIN, }
county, } ss.

Form of
warrant.

To either of the constables of _____ in the county
of _____, greeting:

In the name of the United States of America, you are hereby

required immediately to summons six good and lawful men of the county of _____ to appear before me, one of the coroners of said county, at the dwelling-house of _____, or at the place called _____, within the town of _____, at the house of _____, then and there to inquire upon the view of the body of _____, there lying dead, how and by what means he came to his death. Hereof fail not.

Given under my hand, the _____ day of _____, in the year of _____.

Coroner.

Duty of constable.

§ 4. That the constable to whom such warrant shall be directed and delivered, shall forthwith execute the same, and shall at the time mentioned in the warrant, repair to the place where the dead body is, and make return thereof to the coroner, and of his doing thereon under his hand; and any constable who shall unnecessarily neglect, or fail to execute, or return, such warrant, shall forfeit the sum of ten dollars; and if any person summoned as a juror shall fail to appear, without a reasonable excuse therefor, he shall forfeit the sum of five dollars; which forfeiture may be recovered to the use of the county, with costs of suit, by action of debt, or on the case, to be brought by the coroner.

Jurors to appear.

Jurors, how impanelled

§ 5. That when the jurors who have been summoned appear, the coroner shall call over their names, and then in view of the body, he shall administer to them the following oath:

Oath.

"You solemnly swear that you will diligently inquire, and true presentment make, on behalf of the United States of America, when and how, and by what means, the person whose body lies here dead, came to his death; and you shall return a true inquest thereof according to your knowledge, and such evidence as shall be laid before you, so help you God."

If the six jurors shall not all appear, the coroner may require the constable, or any other person whom he shall appoint, to return jurors from the by-standers to complete that number.

Witnesses, how summoned, &c.

§ 6. The coroner may issue subpoenas for witnesses, returnable forthwith, or at such time and place as he shall therein direct. The persons served with such subpoenas shall be allowed the same fees, and their attendance may be enforced in the same manner by the coroner, and they shall be subject to the same penalties, as if they had been served with a subpoena, in behalf of the United States of America, to attend a justice's court.

Oath.

§ 7. That an oath to the following effect shall be administered to the witnesses, by the coroner. "You solemnly swear that the evidence you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth and nothing but the truth, so help you God."

Testimony

§ 8. That the testimony of all witnesses examined before any inquest, shall be reduced to writing by the coroner, or some other person by his direction, and subscribed by the witnesses, respectively, giving it in.

Inquisition.

§ 9. That the jury, upon the inspection of the dead body, and after hearing the testimony and making all needful inquiries, shall draw up and deliver to the coroner their inquisition, under their hands, in which they shall find and certify, when, how and by what means the deceased

person came to his death, and his name, if it was known, together with all the material circumstances attending his death; and if it shall appear that he was murdered, the jurors shall further state who were guilty, either as principal or accessory, if known, or were in any manner the cause of his death, which inquisition may be in substance as follows:

“ ss. An inquisition taken at _____, in Form of inquisition.
 the county of _____, on the _____ day of _____,
 in the year _____, before _____, one of the coroners of the said
 county of _____, upon the view of the body of _____, (or a
 person) there lying dead, by the oaths of the jurors whose names are
 hereunto subscribed, who being sworn to inquire on behalf of the
 United States of America, when, how and by what means the said
 (or person) came to his death; upon their oaths do say,
 (then insert when, how and by what person, means, weapon or in-
 strument he was killed;) in testimony whereof the said coroner and
 jurors of this inquest, have hereunto set their hands, the day and year
 aforesaid.”

§ 10. That if the jury find that any murder, manslaughter or as- Proceedings in case of murder, &c.
 sault has been committed on the deceased, the coroner shall bind
 over, by recognizance, such witnesses as he shall think proper, to
 appear and testify at the next court to be held in the same county,
 at which an indictment for such offence can be found; he shall also
 return to the same court the inquisition, written evidence, all recogni-
 zances and examinations by him taken; and may commit to the
 jail of the county any witnesses who shall refuse to recognize in such
 manner as he shall direct.

§ 11. That if any person charged by the inquest with having com- ib.
 mitted such offence shall not be in custody, the coroner shall have the
 same power as a justice of the peace, to issue process for his appre-
 hension; and such warrant shall be made returnable before any jus-
 tice of the peace, or other magistrate or court having cognizance of
 the case, who shall proceed therein in the same manner that is re-
 quired of justices of the peace in like cases.

§ 12. That when any coroner shall take an inquest upon the When to bury body.
 view of the dead body of a stranger, or being called for that purpose
 shall not think it necessary, on view of such body, that any inquest
 should be taken, he shall cause the body to be decently buried, and
 all expenses of the inquisition and burial shall be paid by the county
 in which such dead body shall be found.

§ 13. That in case of the absence of the coroner, any magistrate Proceedings in coroner's absence.
 being notified of any dead body, as before mentioned, shall be au-
 thorized to appoint some suitable person, to hold an inquest on the
 same, who shall have the same powers that are hereby conferred on
 the said coroner.

§ 14. There shall be elected, at the annual election, one or more Number of constables elected.
 constables, not exceeding four, in each town of this territory, and the
 certificate of the inspectors of election of such town, or the district in
 which such town is situated, of such election, shall be conclusive evi-
 dence thereof: *Provided*, That when there is only one town in a
 county, the number of constables elected shall not exceed one to each
 election precinct, in such county.

§ 15. Such constable, within twenty days after notice of his elec- Oath and bond.
 tion, and before entering on the duties of his office, shall take an oath

to support the constitution of the United States, and for the faithful discharge of his duties; and shall also give bond with sureties in the penal sum of five hundred dollars, to be filed with, and approved by the clerk of the board of county commissioners, conditioned for the faithful discharge of the duties of his office.

Term of service.

§ 16. Constables shall hold their offices for one year, [and] until others are elected and qualified in the same town or precinct.

When to be appointed.

§ 17. Should there be no constables elected in any town or precinct, the county commissioners are authorized to appoint one constable in such town or precinct, to serve until the next annual election, and who shall qualify as above stated.

AN ACT concerning the attorney-general and district-attorneys.

Attorney-general, how appointed, his duties, &c.

§ 1. There shall be an attorney-general of the territory to be appointed by the governor, with the consent of the legislative council, who shall hold his office for the term of three years, unless sooner removed, and whose duty it shall be to prosecute and defend all suits for and against the territory, and to give his opinion on questions of law when required by the legislature or the governor, and who shall receive as a compensation for his services a yearly salary of two hundred and fifty dollars, payable quarterly out of the treasury of the territory.

District-attorney.

§ 2. There shall be appointed in each of the organized counties a district attorney who shall hold his office for the term of three years, unless sooner removed.

Duty and compensation.

§ 3. It shall be the duty of the said district attorneys to prosecute or defend in all courts of the district, for which they may be respectively appointed, all suits, applications or motions, whether civil or criminal, in which the United States, the territory, the county or any township is interested, or a party, and give their advice to the civil officers of their respective districts, touching any matter in which the public have an interest; and the said district attorneys shall receive such compensation for their services as is allowed by law, to be paid out of the county treasury, provided that the board of county commissioners, may allow them further compensation for extra services.

AN ACT concerning masters in chancery.

Masters in chancery, how appointed, &c.

§ 1. There shall be appointed by the governor, with the consent of the council, one or more, not exceeding three masters in chancery in each organized county, who shall hold their office for three years, unless sooner removed.

Duties.

§ 2. It shall be the duty of masters in chancery, under the direction of the court, to take down in writing testimony either in or out of court, and do all such matters and things as are usually done by masters in chancery, and by examiners in chancery, according to the usages and customs of courts in chancery.

Bond.

§ 3. Each master in chancery before he enters on the duties of his office, shall enter into a bond to the United States in the penal sum of five hundred dollars, with two sufficient sureties being freeholders, or worth that amount of personal property, and residents in the same

Know all men by these presents that we of
are held and firmly bound unto the United States in the penal sum Form of
of five hundred dollars, to be paid to the United States; for the pay- bond.
ment whereof we bind ourselves, our heirs, executors and adminis-
trators, jointly and severally by these presents. Sealed with our seals,
and dated this day of A. D. 18 Whereas the above
bounden hath been appointed to the office of master in chan-
cery on the day of A. D. 18 Now the condition of
this obligation is such, that if the said shall well and faithfully
in all things perform and execute the duties of the office of master
in chancery, during his continuance in said office by virtue of said
appointment, without fraud, deceit or oppression, then this obligation
shall be void, otherwise of force.

§ 5. Every person receiving such appointment who shall neglect to enter into bond with security as aforesaid, and take and subscribe the oath as aforesaid, for the space of thirty days after the receipt of his commission, shall be deemed to have refused to accept said office, and the same shall be considered vacant.

§ 6. That any district court, when sitting as a court of chancery, in the absence of all masters in chancery from the county, or where they may be incapacitated from interest or other cause, may make a special appointment of some person to perform the duties of master in chancery in said county. Special appointment.

§ 1. Supreme court commissioners duly appointed and qualified according to law, shall severally be authorized and required to perform all the duties and to execute every act, power and trust which a judge of the supreme or district courts may perform and execute out of court, according to the rules and practice of such court, and pursuant to the provisions of any statute in all civil cases, except as herein otherwise provided.

§ 2. But where any power is given in express terms by any statute to the judge of the supreme court, or the judges of the district courts, or either of them, only in such statute such commissioners shall not be authorized to exercise any such power. Limitation.

§ 3. No such commissioner shall be authorized to grant any order to stay proceedings in any cause in which a verdict shall have been rendered.

Proceedings
on *capias*.

§ 4. No supreme court commissioner shall grant any order to stay proceedings on any *capias ad respondendum*, or on any attachment.

Not to pre-
vent levy.

§ 5. Where an execution shall have been issued, an order to stay proceedings thereon granted by a supreme court commissioner, shall not prevent a levy on property by virtue of such execution, but shall only suspend a sale thereon until the decision of the court upon the matter.

Proceedings
on execution

§ 6. No such commissioner shall grant any order to stay proceedings on any execution against the body of a defendant, unless such defendant shall have executed to the plaintiff, and delivered to such commissioner a bond for the use of such plaintiff in a penalty double the amount required to be collected by such execution, with two sufficient sureties, who shall swear that they are each worth the amount of such penalty over and above all debts, conditioned that such defendant shall be found within the county, to which such execution was directed, so as to be arrested upon any execution that may be issued against his body on the same judgment, within six months from the date of such bond.

Bond filed.

§ 7. Such bond shall be filed by the commissioner in the office of the clerk of the proper court, within twenty days after the same shall have been taken, and shall be delivered by such clerk to the plaintiff whenever the condition thereof shall be broken.

Order what
to state.

§ 8. In every order to stay proceedings on an execution against the body of a defendant, shall be stated the fact of a bond having been given as required by this act, and if not so stated such order shall be void.

Order not
suspended.

§ 9. When the supreme court shall have made any order in reference to a matter, such order shall not be suspended, or in any manner affected by any order granted by a supreme court commissioner.

When order
denied, &c.

§ 10. If any application for any order be made to any judge of the supreme court, district judge or supreme court commissioner, and such order be refused in whole or in part, or be granted conditionally or on terms, no subsequent application in reference to the same matter and in the same stage of the proceedings, shall be made to any other supreme court commissioner; and if upon any such subsequent application, any order be made by a supreme court commissioner, it shall be revoked by such commissioner, or by any judge of the supreme court or district judge, upon due proof of the facts.

Penalty.

§ 11. Every person making such subsequent application contrary to the foregoing provision, with knowledge of any previous application and refusal, shall be liable to be punished by fine and imprisonment by the supreme or district court.

Order when
not to be
granted.

§ 12. No supreme court commissioner shall be authorized to grant any order on the application of any attorney, counsellor, or party residing more than forty miles from the residence of such commissioner, if there be an officer authorized to grant such order residing within forty miles of the applicant therefor.

Incompeten-
cy.

§ 13. No supreme court commissioner having a law partner, in whose name the business of the co-partnership shall be carried on, shall be competent to perform any act authorized in this act, in any suit or proceeding, in which such partner shall be in any wise interested.

§ 14. The supreme or district court shall have power by general Limitation. rules to prescribe any other cases in which supreme court commissioners shall not be authorized to grant any orders in relation to suits pending in such court, and to prescribe the terms and conditions on which orders may be granted in any specified class of cases, and also, by order, in any particular case to forbid the interference of any such commissioner.

AN ACT relating to supreme court commissioners.

§ 1. That the official acts of all supreme court commissioners heretofore appointed in this territory, and sworn according to law, shall Acts of S. C. com. not be considered invalid on account of there having been appointed in any county a greater number of such supreme court commissioners than such county was entitled to.

§ 2. There shall be appointed in each organized county one or Number. more supreme court commissioners, not exceeding three.

§ 3. This act shall take effect from its passage.

AN ACT to provide for the election of county treasurers, and to define their duties and powers.

§ 1. That there shall be chosen annually, at the time and place of County treasurer, when chosen. electing county commissioners, by the written votes of the qualified voters, a suitable person, being a resident of the same county, to be the county treasurer.

§ 2. The county treasurer shall be sworn to the faithful discharge of his trust by the board of county commissioners, or any one of them, and shall give bond for the faithful discharge of the duties of his office, with sufficient sureties, in such penal sum as they may direct, to the board of commissioners in their corporate name; and the county treasurer so chosen shall continue in office for the term of one year, and until another shall be chosen and qualified in his stead. Oath and bonds.

§ 3. In case the treasurer so chosen shall decline accepting the office, or after accepting, shall die or resign, or remove out of the county within the year, or shall from any cause become incapable of discharging the duties of his office, the said commissioners shall appoint a suitable person, being a resident of the same county, to fill such vacancy; and the person appointed being sworn to the faithful discharge of the trust, and giving bond as before directed, shall be treasurer of said county for the remainder of the year, and until another shall be chosen and qualified in his stead. Vacancies, how filled.

§ 4. No person who holds the office of district attorney or sheriff Who ineligible. shall hold the office of county treasurer.

§ 5. It shall be the duty of the treasurer to receive all moneys due Duty. and accruing to the county, to pay and disburse the same on orders drawn by the board of county commissioners of their proper county, when attested by their clerk, and not otherwise. The said treasurer shall keep a true and just account of all moneys received and disbursed, and hold the same at all times ready for the inspection of said board, and shall at every term of said board furnish them with a statement thereof, balanced to the first day of said term, showing all the moneys received and disbursed by him since his last settle-

ment, and the balance remaining in his hands, together with the averages of taxes in the hands of the collector. He shall moreover once in every year settle his accounts with the said board, and produce his vouchers, which being allowed, shall be cancelled by them, by writing the word "cancelled" on the face of such order, which shall be retained and filed by the clerk of said board.

Duty of treasurer.

§ 6. It shall moreover be the duty of the said treasurer, so soon as he shall have received from the clerk of the board of commissioners a statement of the amount of taxes put into the hands of the sheriff or collector of his county, or of any of his predecessors, and which shall not have been accounted for, forthwith to proceed to collect from such delinquent, his securities, heirs, executors or administrators, the sum or sums in arrear, and due from him or them to the county; and in like manner when such treasurer shall be furnished by the clerk with a statement of jury fees, fines and forfeitures, received by any officer, he shall forthwith proceed to collect the same, according to law, and place the same, when collected, to the credit of the county.

1b.

§ 7. The treasurers of the several counties may in their own names and official capacity prosecute to final judgment and execution any suits upon bonds, notes and other securities given to their predecessors in office, and any suits commenced by their predecessors in office, and pending at their removal therefrom, and they may also prosecute for any injuries done to the lands, buildings or other property of their counties.

Orders, how paid.

§ 8. County orders, properly attested, shall be entitled to a preference as to payment, according to the order of time in which they may be presented; and upon the receipt of money into the treasury, it shall be the duty of the treasurer to appropriate and set apart the sum [same] for the discharge of such county orders so presented: *Provided*, however, that the county treasurers are hereby required to receive of any collector all county orders which such collector may have received in payment of county tax, without regard to the priority of the number of any such order or orders; and provided, that when two or more orders are presented at the same time, precedence, in all cases, shall be given to the order of the oldest date.

To receive moneys.

§ 9. Hereafter it shall be the duty of any person or persons who may intend to exhibit to public view, or show any animal or animals, wax work or other figures, rope or wire dancers, feats of circus riding, or slight of hand, for gain, to apply to the treasurer of each county where such exhibition is to be made, and pay the said treasurer not less than five nor more than one hundred dollars, at the discretion of said treasurer, who shall receipt for the same, which receipt shall be forthwith presented to the clerk of the board of commissioners of the proper county, who is hereby required to make out his permit under the seal of the said county, for which said clerk shall be entitled to receive as a fee therefor the sum of one dollar, to be paid by such applicant, which shall be a sufficient voucher for such applicant to show or exhibit such animals, wax-work or other figures during his stay in such county; such stay not to exceed three months. Nothing contained in this act shall prevent any board of trustees of any incorporated town from taxing such exhibitions agreeably to their corporate laws and ordinances passed in pursuance thereof.

§ 10. All county taxes arising from tavern licenses or otherwise ^{Taxes.} shall be paid into the county treasurer.

§ 11. The county treasurer shall have for his services two per centum for all moneys received and paid out for the county, excepting however moneys arising from the sale of lots at county seats, in which case he shall receive no more than one per cent for both receiving and paying out the same. ^{Compensation.}

§ 12. The treasurer in each county may appoint a deputy, for ^{Deputy.} whose acts he shall be responsible, and who shall take an oath for the faithful performance of the duties of his office.

AN ACT concerning district surveyors.

§ 1. That each county in this territory shall form a surveying district, and the qualified electors in each organized county in this territory, shall at the next annual election, after the passage of this act, elect a surveyor who shall reside in the district, for which he shall have been elected, and shall previous to entering upon the duties of his office take and subscribe an oath or affirmation, faithfully to discharge the duties of the same, and shall give bond to the clerk of the board of county commissioners of the proper county, in the sum of one thousand dollars, conditioned for the faithful discharge of his duties. ^{Surveyor elected.}

§ 2. The said surveyor may appoint such number of deputies as ^{Deputies.} he may think proper, who shall severally take an oath or affirmation of office, and for the faithful performance of whose duties he shall be responsible. The certificate of the district-surveyor elected as aforesaid, or any of his deputies, shall be admitted as legal evidence in any court within this territory, but the same may be explained or rebutted by other evidence; and if said surveyor, or either of his deputies, be interested in any tract of land, a survey of which becomes necessary, such survey may be executed by any competent person to be appointed by the court before which such matter shall be pending. ^{Certificate of surveyor to be evidence, &c.}

§ 3. It shall be the duty of said surveyor, by himself or one of his deputies, to execute any survey which may be required by order of any court, or upon application of any individual or corporation. ^{To survey.}

§ 4. The said surveyor shall keep a correct and fair record of all surveys made by him or his deputies, in a book or books to be provided by the county commissioners for that purpose, which he shall transmit to his successors in office; he shall also number such surveys progressively, and shall preserve a copy of the field notes and calculations of each survey, endorsing thereon its proper number; a copy of which, and also a fair and accurate plot, together with a certificate of survey; shall be furnished by said surveyor to any person requiring the same. ^{Record of surveys.}

§ 5. The said surveyor and his deputies may demand and receive ^{Fees.} for their services the following fees, to wit: For the first mile actually run with a compass and chain, three dollars; for each succeeding mile thereafter, one dollar; for each mile run with a compass alone, one dollar; for every in and out lot laid out and plotted in any town, or addition thereto, thirty-seven and one-half cents; for a plot

and certificate, except town plots, fifty cents; for recording a survey, fifty cents.

Chainmen
and marker.

§ 6. If the party for whom the survey is made does not furnish the chainmen and marker, then the district surveyor, or his deputies, may employ the necessary chainmen and markers, and shall receive one dollar and fifty cents per day for each chainman and marker so employed; and each chainman and marker employed in any survey by any district surveyor or his deputies, shall, before they commence the duty assigned them, take an oath or affirmation before the said surveyor, who is hereby authorized to administer the same, faithfully and impartially to discharge the duties of chainman or marker, as the case may be.

Courses.

§ 7. In all surveys the courses shall be expressed according to the true meridian, and the variation of the magnetic meridian from the true meridian shall be expressed on the plot, with the year, month and day of the same.

Surveyors
appointed.

§ 8. If the office of district surveyor be at any time vacant in any district, the board of county commissioners for such county is hereby empowered to appoint and authorize some competent person to perform the duties of surveyor in such county, until a district surveyor shall be duly elected.

Term of of-
fice.

§ 9. Each surveyor elected as aforesaid, shall hold his office for the term of two years, and until his successor in office shall be elected and qualified.

Surveys
how made.

§ 10. Whenever a surveyor is required to make a subdivision of a section as established by the United States survey, he shall proceed as follows, except when the section is fractional: commencing at either quarter section corner of the section, shall run north or south and east or west across said section, and establish a common centre therefor, at which a post shall be firmly fixed and driven into the ground, and if practicable two bearing trees shall be marked with a suitable instrument, one-quarter S. and their course and distance from the said post noted in the plot and field notes; any less subdivision than a quarter section shall be made by proceeding in the same manner, except in fractional sections, the corners of which shall be established and noted as before provided for, the surveyor denoting the quantity upon the bearing trees as one-eighth or one-sixteenth of a section, as the case may be.

Copies of
surveys to
be preserv-
ed.

§ 11. The county commissioners of the several counties of this territory, are hereby authorized and required to procure from the several land-offices in this territory, a copy of the field notes of the United States surveys, of each township of land in their respective counties, which shall be deposited with the register of deeds of the proper county.

AN ACT to provide for the election of registers of deeds, and to define their duties and powers.

Registers.

§ 1. The several registers of deeds in each county, shall continue in office until their successors shall be elected or appointed in their stead, as hereinafter provided.

When cho-
sen.

§ 2. At the period of the general election in the several counties, in the year one thousand eight hundred and thirty-nine, and every second year thereafter, unless a vacancy shall sooner occur, the qualified

voters of said counties shall elect registers of deeds, each of whom shall hold his office for the term of two years from the time of such election, and until some other person shall be chosen and qualified in his stead, unless he shall be sooner removed from office by order of the county commissioners, as hereinafter provided. And if any person, after his term of office has expired, and his successor shall have been duly elected and qualified, shall refuse to surrender up all books, records and papers belonging to said office, he shall forfeit and pay to the use of the proper county, fifty dollars for each and every day he shall so refuse, to be sued for and recovered before any court in the territory having competent jurisdiction.

Penalty for refusing to surrender books, &c.

§ 3. Every register of deeds, whether chosen by the voters in the several counties, or appointed by the county commissioners, shall be sworn before some person authorized to administer oaths, to support the constitution of the United States, and to the faithful discharge of the duties of his office; and shall also give bond therefor, with sufficient sureties, to be approved of by the county commissioners, in the sum of five thousand dollars, to the treasurer of the county.

Oath and bond.

§ 4. Whenever any register of deeds, upon presentment of the grand jury, shall be found guilty of misconduct in discharging his official duties, the commissioners shall, upon reasonable notice, remove him from office, and may order the books, papers and other things belonging to the office, to be delivered over to the clerk of the board of county commissioners, or to any new register appointed or elected, as provided in this act, until the vacancy shall be filled by a new election; and in case of the death, resignation or removal of any register of deeds, the commissioners of the county in which such vacancy shall happen, shall forthwith meet at the place where their next regular meeting would be held, and shall appoint, on their records, some suitable person to be register of deeds, until the vacancy shall be filled by [by] a new election.

Register to be removed by county commissioners in certain cases.

§ 5. Whenever a vacancy shall happen in the office of register of deeds in any county, the clerk of the board of county commissioners shall issue notice thereof, directed to the sheriff of the county, at least twenty days previous to the day of the next annual election, and the sheriff shall post up such notice at least eight days previous to such election, in manner and form as required in other like cases. If such vacancy shall happen so that twenty days' notice cannot be given, previous to the day of the next annual election, then a special election shall be held to fill such vacancy; and the person so elected shall hold the same for the residue of the term for which the former register was elected.

Vacancies how filled.

§ 6. The county commissioners shall provide and maintain rooms with suitable alcoves, cases and boxes, for the safe keeping of all the record, files, papers and documents belonging to the several registries of deeds.

Rooms, &c.

§ 7. Every register of deeds shall keep a book, each page of which shall be divided into six columns, with titles or heads to the respective columns in the following form, to wit:

Book of deeds.

Date of reception.	Grantors.	Grantees.	Where the land lies.	To whom the deed is delivered, after being recorded.	Fees received.
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Records
how kept.

§ 8. The register shall enter in the said book all deeds and other instruments left to be recorded, and all copies left as cautions, or notices of liens, in the order in which they are received, noting in the first column the day, hour and minute of reception, and the other particulars in their appropriate columns; and every instrument shall be considered as recorded at the time so noted. He shall also certify, upon every instrument recorded by him, the time when it was received, and the number of the book and the page where it is recorded.

Deputies to
be appointed.

§ 9. The register of deeds in the several counties of this territory, are hereby authorized to appoint deputy-registers, and may revoke their appointments at pleasure; and shall be responsible for the acts of their deputies. Before any such deputy shall be authorized to perform any of the duties of the register, he shall subscribe and take an oath for the faithful performance of his duties; and his appointment and oath of office shall be recorded in the office of register of deeds of the proper county.

AN ACT to define the general powers of counties, and for other purposes.

Powers of
counties.

§ 1. That each county shall continue to be a body politic and corporate, for the following purposes, to wit: To sue and be sued, to purchase and hold, for the public use of the county, lands lying within its own limits, and any personal estate; to make all necessary contracts, and to do all other necessary acts in relation to the property and concerns of the county.

Conveyances.

§ 2. All real and personal estate heretofore conveyed, or which shall hereafter be conveyed by any form of conveyance, and duly acknowledged and recorded to the inhabitants of any county, or to the county treasurer, or to any committee or other persons, for the use and benefit of such county, shall be deemed to be the property of such county; and all such conveyances shall have the same force and effect, as if they had been made to the inhabitants of such county by their respective corporate names.

Power of
commissioners.

§ 3. The county commissioners, or other public officers, having the charge and management of the county lands, may by their order of record, appoint agents to sell any real estate of their county; and all deeds made in behalf of the inhabitants of the county by such agents, under their proper hands and seals, and duly acknowledged and recorded, shall be sufficient to all intents and purposes, to convey all the rights, title, interest and estate whatever, which the county may then have to the lands so conveyed.

Court-houses,
jails, &c.

§ 4. Each county may, at the common expense of the county, provide suitable court-houses, jails, fire-proof offices, and all other necessary public buildings, for the use of the county.

Liable for
acts of sheriff.

§ 5. In case of the escape of any prisoner, by reason of the insufficiency of the jail, whereby the sheriff shall be made liable to any party at whose suit such person was committed, or to whose use any forfeiture was adjudged against him, the county shall reimburse all sums of money recovered of the sheriff by such party on account of such escape.

§ 6. All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment in the district court of the county against which the action is brought. Actions against.

§ 7. Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant in such action resides. When any action shall be commenced against any county, a copy of the summons shall be left with the clerk of the board of the county commissioners, either during their session, or so that a term of said session shall intervene between the day of leaving a copy of such summons and the return day thereof. There shall always be ten days between the service and return of every such summons, in all actions brought by or against every county. The inhabitants of the county so suing or being sued, may be jurors or witnesses, if otherwise competent or qualified according to law. Actions where brought.
Summons how served.

AN ACT organizing a board of county commissioners in each county of this territory.

§ 1. There shall be in each county of this territory, a board of county commissioners for transacting county business, to consist of three qualified electors, to be elected by the qualified electors of the several counties respectively. County commissioners.

§ 2. The county commissioners now in office in the several counties, shall continue to hold their offices according to the law under which they have been elected, and as vacancies occur, new elections shall be had in the manner herein prescribed. To continue in office.

§ 3. The term of service of the county commissioners elected at the first general election under the law organizing the board of county commissioners, passed December 20th, 1837, who had the highest number of votes, shall expire on the first Monday of August, 1840; the term of service of the county commissioner who had the next highest number of votes, shall expire on the first Monday of August, 1839; the term of service of the county commissioner elected at the last general election in September, shall expire on the first Monday of August, 1841; and hereafter, annually, one commissioner shall be elected at the general election, for the term of three years, who shall not be an inhabitant of the town in which any other commissioner resides, whenever there are more than two towns established in any county, and each commissioner elected according to the provisions of this act shall continue in office until his successor is duly elected and qualified. Term of service.

§ 4. Each person elected as a commissioner, shall, on receiving a certificate of his election, take an oath to support the constitution of the United States, and to discharge the duties of his office as such commissioner faithfully and impartially, before some person legally authorized to administer the same, which oath shall be filed in the office of the clerk of the district court of the proper county, and being certified on the back of such certificate, under the hand and seal of the person administering the same, shall be sufficient authority for such commissioner to take his seat with, and act as a member of the board during the time for which he was elected. Oath.

County commissioners a body corporate.

§ 5. The county commissioners thus elected and qualified, shall be considered a body corporate and politic, by and under the name and style of "the board of commissioners of the county of" (naming the county) and as such may sue and be sued, plead and be impleaded, defend and be defended, answer and be answered unto, in any court, either of law or equity, and do and transact all business on behalf of their respective counties, that may be assigned them from time to time by law; and in all cases where their respective counties may have been injured, or may hereafter be injured, in their goods, chattels, lands, tenements, rights, credits, effects or contracts, such commissioners shall and may, by and under their corporate name and style, bring any suit or suits, action or actions, either in law or equity, which may be best calculated to obtain redress for any such injury, and may in like way and manner, by and under their corporate name and style, be sued by any person or persons having any manner of claims against such county.

When to meet.

§ 6. The board of commissioners shall meet in each and every county for the purposes aforesaid, at the usual place of holding the district court in such county, on the first Monday in April, July, October and January, in each and every year, and may sit six days at each term, if the business of the county shall require it: *Provided, however,* If the district court shall meet on any of the before mentioned days, the commissioners shall meet on the Monday preceding.

Chairman and clerk.

§ 7. The county commissioners of each county shall at their first meeting after an election, choose by ballot a chairman of their board: they shall also appoint a clerk, who shall attend the meeting of the board of commissioners, and keep a record of their proceedings, and do such other business as he shall be required by law to do, and shall give a bond to the treasurer of the proper county, with two or more sufficient sureties to be approved of by said treasurer, in the sum of two thousand dollars, conditioned for the faithful performance of the duties of his office. The sheriff of the county shall also, by himself or deputy, attend said board and execute their orders, when required by said board.

County officers first paid.

Judgments, how paid.

§ 8. When money has been advanced by any clerk or other county officer for the use and benefit of his county, pursuant to the requisitions of law, the board of commissioners shall order such money so advanced, to be first paid; and when there is any judgment or judgments against any county in the territory, the board shall order such judgment to be paid out of any money in the treasury not appropriated to any specific purpose.

Quorum.

§ 9. Any two of the board of county commissioners shall be competent to transact the business of the board, but if there shall be a division on any question, it shall be continued to the next meeting before it shall be finally determined; and if any vacancy shall happen in the office of commissioners, the clerk of the board shall immediately notify the sheriff of the county, whose duty it shall be to order an election to be holden for the purpose of filling such vacancy: thirty days previous notice of such election being given, by publishing the same in a county newspaper, if there be one, and if not, by putting up notices in three different public places in said county.

Vacancy, how filled.

§ 10. It shall be the duty of the board of commissioners, at their ^{Tax levied.} July session in each year, to receive and inspect the assessors books, and levy a county tax according to law, and cause their clerk to make out duplicates for collection accordingly.

§ 11. The commissioners of each county respectively, shall have ^{Seal.} and use a common seal for the purpose of sealing their proceedings, and copies of the same when signed and sealed by said commissioners, and attested by their clerk, shall be good evidence of such proceedings, on the trial of any cause in any court of the territory. The commissioners aforesaid, at their session in January, or when the district term prevents their meeting in January, then at their first meeting thereafter in every year, shall make a fair and accurate statement of the receipts and expenditures of the preceding year, and ^{Receipts and expenditures.} have the same set up at the court-house door, and at two other public places in the county respectively, and published in some newspaper in their county, if there be any; and if any commissioner, after accepting his appointment, shall neglect or refuse to do his duty in office, the one so offending shall, on conviction by indictment before the district court of the proper county, be fined in any sum not exceeding one thousand dollars.

§ 12. All suits, pleas, complaints, prosecutions and proceedings, ^{Suits against supervisors.} which may be pending in any court, to be tried for or against any board of supervisors, previous to the taking effect of this act, shall be prosecuted to final judgment and execution, in the same name and manner as the same might have been done had this law not been passed; and all contracts, either written or verbal, made by such board of supervisors previous to the taking effect of this act, shall remain valid in law and equity, and suit may be thereupon brought in the same way and manner as the same might have been, had this act not been passed, with the difference that the corporate name of the commissioners shall be used instead of the board of supervisors.

§ 13. The general powers of the board of county commissioners ^{General powers.} shall be,

1st. To provide for the erecting and repairing of court-houses, jails, and other necessary public buildings, within and for the use of the county, and to provide suitable rooms in case there are no such public buildings.

2d. To lay out, discontinue, or alter highways, and other ways, and to award damages occasioned thereby.

3d. To grant licenses to inn-holders, retailers of spirits and other liquors, and common victuallers, and for keeping ferries, in their respective counties.

4th. To apportion and assess county taxes, as provided by law.

5th. To examine, allow and settle, all accounts of the receipts and expenditures of the moneys of the county.

6th. To represent their respective counties, to have the care of the county property, and the management of the business and concerns of the county, in all cases which are not otherwise specially provided for.

7th. To provide books and stationery for the use of their board, for the use of the register of deeds, and for the use of the clerk of the district court, the probate court, and treasurer.

§ 14. When the holder of an attested county order, of a larger ^{Clerk to give orders.} amount than his county tax, is desirous of appropriating a part of

such order to the payment of such tax, he is hereby authorized to apply to the clerk of the board of commissioners, whose duty it shall be to give to the holder of such order, and in exchange therefor, two or more attested county orders, making together the same amount with the original order, which shall be thereupon cancelled; and such clerk shall insert in every such order, that the same, with others, were so given in exchange, to (name the person) for such original order, together with the number and amount of such original order, one of which orders shall be for the amount of his tax, and shall appear on its face to have been intended for the payment thereof.

Duty of collector.

§ 15. Every collector of county taxes is hereby required to receive any regularly attested county order made by the board of commissioners, when the same may be tendered to him by any person, in payment of such person's taxes due such county.

Not to purchase orders &c. at a discount

§ 16. No collector or other person doing county business, shall either directly or indirectly, purchase or receive in payment, exchange, or in any way whatever, any demand against his county, or any county order, for a claim allowed by the board of commissioners at any time during the period for which he may be elected, for a less amount than that expressed on the face of such order or demand against the county; and any collector or other person doing county business, offending against the provisions of this section, on conviction thereof, upon indictment or presentment, shall be fined for every such offence, in any sum not exceeding five hundred dollars.

Extra sessions.

§ 17. The said board of commissioners are hereby authorized to hold extra sessions in case the business of the county requires the same, and due notice from any two of the commissioners to the third, shall be considered a sufficient call for such extra session; but no such extra session shall exceed three days.

Appeal.

§ 18. From all the decisions of the several boards of commissioner there shall be allowed an appeal to the district court, by any person or persons aggrieved, and the person or persons appealing shall take the same within thirty days after such decision, by giving bond with security, to the acceptance of the clerk of said board, conditioned for the faithful prosecution of such appeal, and the payment of costs, if the same shall be adjudged by the said court to be paid by such appellant; and the clerk shall record such appeal, with the cases pending in the district court, within twenty days after the taking of such appeal.

Compensation.

§ 19. The commissioners elected and qualified according to the provisions of this act, shall each receive three dollars per day, for each and every day they may necessarily be employed in transacting the county business, and eight cents for each and every mile necessarily travelled in the discharge of their duties; provided that they shall not receive pay by the day for the time employed in travelling.

Clerk to keep accounts, &c.

§ 20. It shall be the duty of the clerks of the several boards of commissioners, to keep fair books, wherein shall be kept the accounts of the county; to attest all orders issued by the board for the payment of money, and enter the same in numerical order in a book to be kept for that purpose, and shall copy into their said books the reports of the treasurer, of the receipts and disbursements of their respective counties; and whenever the duplicate shall be put into the

hands of the collector, it shall be the duty of the said clerks to send a statement [of the sum] wherewith such collector stands charged to the county treasurer.

§ 21. The board of commissioners shall annually allow their clerk such compensation per day as they may deem reasonable, while in session, provided such compensation shall not exceed three dollars per day; they shall likewise allow the sheriff or his deputy, one dollar and fifty cents per day while in attendance upon the board, but the board may allow the clerk and sheriff any sum they may deem reasonable for extra services, not exceeding seventy-five dollars to each, per annum. Pay of clerk and sheriff.

AN ACT for opening and repairing, or vacating, public roads and highways.

§ 1. That all public roads and highways shall be opened, amended and repaired agreeably to the directions of this act, and the board of county commissioners shall have authority to make and enforce all orders necessary, as well for establishing and opening new roads, as to change or vacate any public road, or any part thereof, in their respective counties. Roads, how opened.

§ 2. Applications for new roads shall be made by petition, signed by at least ten householders of the township, or townships, in which such road is desired, (six of whom shall be of the immediate neighborhood,) specifying the proposed beginning, course, and termination thereof. Petitions.

§ 3. Notice of each intended application shall be given by advertisement, in three or more public places in said township, at least thirty days prior thereto. Application.

§ 4. The said board, when the petition is presented and publicly read, and upon proof of notice as above, shall, if they deem the road prayed for necessary, appoint three disinterested electors as viewers thereof. Viewers.

§ 5. The said viewers, or a majority of them, having taken an oath or affirmation, faithfully and impartially to discharge their duties, shall proceed to view the route proposed, and if they deem it of public utility, lay out and mark such road on the best ground that can be obtained, not running through any person's inclosure of one year's standing without the owner's consent, unless a good way cannot otherwise be had. Their authority.

§ 6. The said viewers, or a majority of them, shall make and certify a copy of their proceedings, to the ensuing session of the board, when the same shall be publicly read, and if no objections be made to such proposed highway, the said board shall cause a record thereof to be made, and order the said road to be opened and repaired a necessary width, not exceeding sixty-six feet, which shall henceforth be a public highway. To report.

§ 7. If any person through whose land the said road may run feels aggrieved thereby, such person may set forth his, her or their grievances, by way of remonstrance, and the said board shall thereupon appoint three disinterested electors, and assign a day and place for them to meet. In case of remonstrance.

Road to be reviewed.

§ 8. The said electors having had five days' notice from either of the parties, shall meet and take an oath, or affirmation, faithfully and impartially to discharge the duties assigned them. They shall then, or on any other day, prior to the next session, to which the majority may adjourn, proceed to review the proposed road, and assess the damages, if any, which such objector or objectors will sustain, from such road being opened and continued through his, her or their lands, and shall report the same to the ensuing session of the board.

Costs of review, how paid.

§ 9. If the majority of said reviewers, assess and report damages in favor of the objector or objectors, the costs and damages shall be paid out of the county treasury; but if the majority report unfavorably, the objector or objectors shall pay the costs, and in either case said road shall be opened and recorded.

Proceedings in case of objection.

§ 10. If any three electors, of any township or townships through which the proposed road may run, shall object, at the time and in the manner aforesaid, to the same, as not of public utility, other viewers shall be appointed, who shall proceed as before directed.

1b.

§ 11. If a majority of said reviewers report against the utility of said road, the same shall not be established, unless the petitioners will open and maintain the same at their own expense, and in either case the petitioners shall pay the costs that shall have accrued; but if they report favorably thereto, the objectors shall pay the costs of the review, and the road ordered to be opened and recorded.

Privilege to cultivate road.

§ 12. Any person or persons wishing to cultivate land through which any road may run, may petition the board for permission to turn such road on his, her or their land, or the land of any other person consenting thereto, at his, her or their expense.

1b.

§ 13. Three viewers shall thereupon be appointed, who shall proceed to view the same, and report the respective distances and situation of the ground of the established and proposed road.

1b.

§ 14. If upon the report, the board being satisfied, that the public will not be materially injured by such change, they shall order the same; and upon satisfactory assurance of said road being opened equally convenient for travellers, the board shall vacate so much of the former road as lies between the different points of intersection, and record said reviewers' report.

Road, how changed.

§ 15. Any person or persons, desiring to change any territorial road passing through his, her or their lands, may apply for that purpose to the board of county commissioners of the proper county, by petition, signed by ten householders of the proper township or townships, particularly setting forth the part so prayed to be altered.

1b.

§ 16. The said board shall thereupon appoint three disinterested electors of the proper county as commissioners, who shall meet within thirty days thereafter, and having taken an oath or affirmation faithfully and impartially to discharge the duties assigned them, proceed to view the established and proposed road; and if justice and the public good require such alteration, they shall lay off and mark such new way, and report their proceedings, in writing under their hands and seals, to said board, which shall be a part of said territorial road, and opened accordingly, and the old part vacated.

1b.

§ 17. When any territorial road is opened, it may be changed agreeably to the two foregoing sections; but the old road shall not

be vacated, until the person or persons applying for such alteration, shall cut, open, and repair the new fully equal to the old road.

§ 18. When any alteration, as aforesaid, shall be proposed, to extend from one county into another, or when any new road extending from one county into another shall be proposed to be laid out, twenty householders of either county may file their petition, setting forth the part of the road proposed to be altered, or the new road so proposed to be laid out, with the clerk of the board of commissioners of the proper county, at least thirty days before the term at which they may make such application. When road lies in two counties.

§ 19. The clerk of said board shall forthwith notify the clerk of the adjacent county, in writing, that such petition has been filed, and transmit him a copy thereof.

§ 20. The clerk, receiving such information and copy, shall lay the same before the board of commissioners of the proper county, on the first day of its next term.

§ 21. The said boards, respectively, shall appoint, on the part of each county, three disinterested electors as commissioners, and the board receiving the copy shall set a time, (not under thirty days,) for the meeting of the respective commissioners, at the dividing line of said counties, and as near as may be to the point where the proposed road crosses.

§ 22. The clerk of the said last mentioned board shall forthwith give written information to the sheriff of the county, where the original petition was filed, of the time and place of meeting of said commissioners; and the sheriff of said counties shall notify, respectively, the commissioners, at least ten days before the meeting.

§ 23. The commissioners appointed as aforesaid, shall meet at the time and place specified, and after taking an oath or affirmation, proceed to discharge the duties assigned them, being governed by the requisitions of the sixteenth section of this act, except that the commissioners shall report their proceedings at the next term of the board of county commissioners respectively.

§ 24. If the majority of said commissioners report in favor of an alteration of such road, or of such new road, the said board, upon being satisfied that the provisions of the seventeenth section of this act have been complied with, by opening the new way, shall cause so much of said road as lies in each county, to be recorded as a territorial road, and vacate the old one, and the new road extending from one county into another, laid out as aforesaid, shall be opened and recorded as county roads.

§ 25. The commissioners appointed under the provisions of this act, and the surveyors, chain-bearers and markers they may necessarily employ, shall severally receive such reasonable pay as the board of county commissioners may allow. Compensation of commissioners, &c.

§ 26. Applications for the alteration or vacation of any road or highway, shall be made in the same manner that applications are made for new roads, and may be altered or vacated in like manner that new roads are viewed and laid out. Applications for alterations.

§ 27. Any person may for his convenience have a cart-way, not exceeding thirty feet in breadth, laid out from or to any plantation, Cart-ways.

dwelling-house, or public highway, on petition to the proper board, having advertised his intentions as required by this act, which board shall cause the same to be publicly read, and if they think proper, order a view of the same.

To be recorded.

§ 28. Said cart-way shall, in the discretion of said board, be recorded and declared a common cart-way, for the use and convenience of the public, and shall be opened by the persons petitioning therefor.

Damages.

§ 29. If the said cart-way shall be laid out through any person's land, objecting thereto, the damages shall be assessed, as is provided in cases of objection to public roads and highways; which being paid by the person applying for such way, he may proceed to open the same agreeably to the order of said board.

Cart-way changed.

§ 30. If the owner or owners of any land through which such cart-way passes, be desirous of improving the same, he, she, or they may be permitted to turn the same on as good ground, not increasing the distance more than one-twentieth, on application to said board.

Gates.

§ 31. Any person may be permitted by said board, to hang swinging gates upon said cart-way, but shall keep the said gate or gates in good order and repair, under penalty of one dollar for every offence, to be recovered before a justice of the peace of the proper county, by any person prosecuting for the same, to be appropriated towards keeping said way in repair.

Who liable to labor.

§ 32. All male inhabitants between the ages of twenty-one and fifty years, persons exempted by law, or excused by the board of commissioners for good cause shown, excepted, shall work public roads and highways two days in each year; and all persons, except those as before excepted, found in any district, at the time the supervisors notify or warn the different individuals to labor on the public roads in the county or territory, for ten days immediately preceding the notification or warning, as aforesaid, shall be liable to labor as before named. And it shall be the duty of the supervisors in their respective districts, to enrol the names of all such persons, and cause the same to perform the labor to be performed agreeably to the provisions of this act.

Property liable to be taxed.

§ 33. All real estate, as well the property of non-residents as residents, shall be subject to be taxed annually, for the purpose of opening and working the public highways, which tax shall not exceed one-half of one per cent, and shall be levied by the board of county commissioners, as other taxes are. And said board shall proceed to assess all such taxes, as above provided, at their session in January, and shall cause a copy thereof to be delivered by the sheriff, to each of the supervisors of the road district within their county, within thirty days from such assessment: *Provided*, each person, so assessed, may discharge the tax thus imposed, in labor upon the highways, under the direction of the supervisor of the road district in which he may reside, or where the property so assessed shall be located; and the person so laboring on the highways, shall be credited for all labor so performed, at the rate of two dollars per day.

Penalty.

§ 34. Each person made liable to work by this act, who shall fail to attend in person or by satisfactory substitute, at the time and place appointed within said district, with the designated tool or instrument, having had three days notice thereof, or having attended shall spend his time in idleness, or disobey the supervisor, shall forfeit

two dollars for each such delinquency, to be recovered by action of debt in the name of the supervisor, before any justice of the peace of the proper county.

§ 35. The said supervisor shall be accountable for the sums received as aforesaid, and shall expend the same in repairing the roads in his district, and in suits brought by the supervisor, in pursuance of this act, he shall be a competent witness; and on any suit, as aforesaid, he shall not be liable for costs. Duty of supervisor.

§ 36. Where the supervisor has not an opportunity of giving personal notice of the time and place allotted for such work, a written notice thereof, left at the dwelling-house or usual place of residence of the party, shall be deemed sufficient. Notice.

§ 37. Every person who shall at the request of the supervisor of his road-district, furnish a plough or wagon, with a pair of horses or oxen, and driver, and perform one or more days work with them, shall, for each days work, so performed, receive a credit of three days work, and so in proportion for services of a similar kind, with greater or less force. Compensation.

§ 38. The said supervisors before entering upon their duties as such, shall take an oath or affirmation before some person duly authorized to administer the same, faithfully and impartially to discharge the duties enjoined upon them. Oath.

§ 39. Any householder or elector refusing to accept said appointment of supervisor, or to take the oath required, shall forfeit and pay the sum of six dollars, to be recovered by presentment or indictment; *provided*, no person shall be compelled to accept said appointment oftener than once in four years. Penalty.

§ 40. To each of the supervisors elected or appointed, the board of commissioners shall assign his road district, and cause to be forwarded to him, a certificate of his election or appointment, setting forth the boundaries of his district. District assigned to.

§ 41. The sheriffs of the several counties shall deliver to the supervisors respectively, their certificates of election or appointment, and make return thereof to the clerk of said board, who shall enter the same on the records of said board. Certificates of election.

§ 42. As often as the roads and highways within the district of a supervisor shall require opening or repairing, he shall call out the hands allotted him, oversee and keep them close to their business, and work upon, open, clear and repair the same; and in all cases where the hands allotted to any roads or road district, shall have performed the number of days' work required of them by law, if such road shall remain unfinished, or shall at any time be found out of repair, it shall be the duty of the supervisor of such roads to call out the hands assigned him in his district, in proportion to the tax on them already assessed, to complete said road, or to keep the same in repair. Supervisors to open roads, &c.

§ 43. It shall be lawful for any supervisor, or any person or persons by his order, to enter upon any lands adjoining or lying near the road in his district, and cut or open such ditches or drains, and construct such dams as shall be necessary for the making or preservation of said road, doing, however, as little injury to the owner of such land as possible. To enter on lands.

Penalty for
destroying
dams, &c.

§ 44. Any person who shall wilfully break down or destroy such dams, or stop or fill said ditches or drains, shall forfeit five dollars for every such offence, to be recovered in the name of the said supervisor before any justice of the peace of the proper county, and applied to the opening and repairing of roads in said district.

Supervisors
may cut
wood, &c.

§ 45. Every supervisor shall have full power to enter upon any unimproved lands, adjoining or near the roads, and gather, dig, or cause to be dug, any gravel, sand, or stone, and cut down any wood, or trees, and carry off the same, that shall be necessary for the making or reparation of said road, doing, however, as little damage as may be to the owner of such land.

Damages,
how as-
sessed.

§ 46. If any person feels himself aggrieved by the removal of such timber, stone or gravel, from his, her, or their land, such person may apply to the board of commissioners, who shall appoint three disinterested electors, who, after taking the proper oath or affirmation, shall proceed to assess the damages, if any there be, which shall be paid out of the county treasury.

Guide posts.

§ 47. Every supervisor shall erect and keep a post at the forks of every road or highway within his district, the expense of which shall be paid out of any fund which may come into his hands for road purposes, containing a legible inscription directing the way, and showing the distance to the most remarkable place on each road respectively, under a penalty of five dollars.

Penalty for
injuring.

§ 48. Any person who shall intentionally demolish such post, or deface or alter any inscription thereon, shall for every such offence forfeit and pay to said supervisor ten dollars, to be recovered before any justice of the peace of the proper county, for the use of the roads in said district.

Obstructing
road.

§ 49. If any person shall obstruct any public road unnecessarily, and to the hindrance of passengers, such person shall forfeit a sum not exceeding ten dollars, to be recovered in the name of the proper supervisor.

Suits.

§ 50. The supervisors respectively, shall, as often as informed of such obstruction, commence suit against the person obstructing as aforesaid, before any justice of the peace of the proper county or township, which suit shall be prosecuted as for debts of a similar amount.

Penalty.

§ 51. every person fined as aforesaid, shall forfeit not less than one nor more than five dollars for each day he may suffer such obstruction to remain, to the hindrance of passengers, to be recovered as aforesaid.

Trees to be
removed.

§ 52. When a public road, or highway, shall run through or border on any plantation, and become obstructed by the falling of trees, or otherwise, it shall be the duty of the owner of such plantation to remove such obstruction as soon as the same shall come to his knowledge, for which the supervisor of such road shall give him a reasonable compensation by a credit on his liability to work on roads.

Compensa-
tion of su-
pervisors.

§ 53. Each supervisor shall be allowed two dollars per diem for each day he may be necessarily employed in the discharge of his duties, to be paid out of any moneys by him collected for road purposes in the district over which he presides.

Penalty for
neglect.

§ 54. In all cases when the supervisor shall wilfully fail, or neglect to keep his said road in good repair, or to faithfully appropriate

moneys collected or received for the use of his road, or in any manner to comply with the duties required of him by this act, he shall forfeit and pay a sum not exceeding ten dollars, to be recovered before any justice of the peace of the proper township to the use of his said road district.

§ 55. Whenever in the opinion of the board of commissioners the public convenience shall require that a bridge should be built over any water course, they shall direct the supervisor to build the same, if they deem it expedient. Bridges.

§ 56. The said supervisor shall advertise in the most public places in the county, the time and place he will contract with some fit person to build such bridge, which contract shall be in writing, signed by the parties contracting, and filed in the proper clerk's office. Contracts for building.

§ 57. Bond and security shall be required from the undertaker of such bridge, which shall be approved by the board of commissioners. Bond.

§ 58. The board may receive from individuals subscriptions and donations as a contribution towards the building of such bridge, which shall be applied accordingly. Subscriptions may be received.

§ 59. The board may appropriate any money that may be in the county treasury belonging to the road funds, to the building of bridges in said county. Money appropriated.

§ 60. Each supervisor shall cause all the hands in his district to work the number of days required by law, or collect from each person two dollars for each day he fails to work, and keep an exact account of the work done by each man, and money collected for the use of roads, and return an accurate copy thereof to the clerk of the board of commissioners on the first Monday in January after his election, and pay to his successor when elected and qualified, on demand, all money collected as aforesaid, not expended upon his roads, which account he shall attest under oath. Duty of supervisor.

§ 61. If any supervisor shall fail to compel the hands of his district to work out the full time required of them by law, or pay the money required by this act, or shall fail to keep or return an accurate account of the work done, or money collected as aforesaid, or shall fail to pay over to his successor the money which may remain in his hands unexpended as aforesaid, he shall, for each offence, pay not less than ten nor more than fifty dollars, to be recovered in the name of the board of commissioners before any justice of the peace, for the use of his road district, which shall be paid by the justice collecting the same to the successor of said supervisor, and such successor is hereby authorized to collect all judgments obtained by his predecessor, as if they were obtained in his own name. Forfeiture for neglect.

§ 62. Each supervisor shall be authorized to purchase, with moneys in his hands, arising from fines collected from delinquents in his district, ploughs, scrapers, crow-bars, hammers, and other necessary implements. To buy ploughs, &c.

§ 63. When any public road shall be established, or has heretofore been established, on a county line, the board of commissioners in their respective counties shall cause the same to be opened and repaired in the same manner as if the whole of said road was in the limits of the county. Road on county line

§ 64. In all cases, if the supervisor is unable to collect the road tax from any person within his district, from the goods and chattels of When supervisor cannot collect tax.

Tax to be
collected by
collector.

such person, or property assessed, agreeably to the foregoing provisions of this act, it shall be the duty of such supervisor to return a list of such delinquents to the board of commissioners of the proper county, which list shall be certified under oath by said supervisor to be correct. And the said commissioners at their next session shall thereupon furnish the collector of the proper county with a true copy of the list of all such delinquents, who shall thereupon proceed to sell any property, real or personal, upon which such tax has been assessed by said board of commissioners, or so much thereof as will pay the tax, and all costs accrued thereon in the same manner, at the same time, and under the provisions, that the county revenue is collected in such cases; and when such collection is made the county commissioners shall order the same to be paid to the supervisor in the district in which such delinquent property has been returned, and said supervisor shall appropriate the money so collected as hereinbefore provided. And whenever the same person or property has been returned as delinquent, both for taxes assessed for general county purposes, and taxes assessed for road purposes, the real or personal property of such delinquent, or the property on which the tax assessed could not be collected, shall be sold for both taxes in one sum, and the amount so collected for road purposes shall be kept distinct and separate, and the county commissioners shall order it to be paid over to the supervisor of the district in which such person or property was returned as delinquent; and if a part only of the taxes shall be collected at such sale, a sum proportioned to the amount which the road tax bore to the tax for county purposes, shall be reserved and ordered to be paid over to the supervisor thereto entitled.

Application
for new
roads.

§ 65. In all cases where application is made for the vacation or alteration of any road, or the location of any new road or cart-way, under the provision of this act, such applicant or applicants shall cause a sufficient recognizance to be given to the county, with sureties to the satisfaction of the commissioners, for the payment of all expenses of viewing such road or roads; and if the report of the viewers be favorable, such expenses shall be paid out of the county treasury; if their report be unfavorable, such expenses shall be paid by the persons who have recognized therefor; and if they shall refuse or neglect to pay such expenses when required by the commissioners to pay the same, such expenses shall be ordered by the commissioners to be paid from the county treasury; and thereupon the commissioners, after giving due notice to the persons who shall have so recognized, shall commence action against them, or some of them, on the recognizance, unless sufficient cause shall be shown to the contrary, for the amount ordered to be paid by them, with the further costs of the notice, and the money shall be collected as in other cases, and paid into the county treasury.

AN ACT concerning fences and fence viewers.

What deemed
a legal
fence.

§ 1. All fences of four and a half feet high, and in good repair, consisting of rails, timber, boards or stone, or other matter or thing equivalent thereto, in the judgment of the fence viewers, within whose jurisdiction the same shall lie, shall be deemed legal and sufficient.

§ 2. There shall be elected at the annual election, three fence viewers in each town or precinct, and if, for any cause, they should not be chosen at such election, they may be elected at any special election. Such fence viewers shall hold their office for one year, and until others are elected in their stead. Fence viewers to be elected.

§ 3. It shall be the duty of fence viewers, on request, to view all fences in the same town or place for which they are chosen, and every fence by them, or a majority of them, adjudged good and sufficient, shall be considered as such, to all intents and purposes; and in all cases where the line upon which partition fence is to be made or divided is the boundary line of one or more towns, or partly in one town and partly in another town, a fence viewer or fence viewers, shall be taken from each town. To view fences.

§ 4. If any fence viewer shall neglect to attend, and do any of the duties enjoined upon him by law, he shall forfeit and pay the sum of five dollars, for every such neglect, to any person who will sue for the same, with costs. Penalty for neglect.

§ 5. In all cases in which fence viewers shall make a division of fence, or shall estimate the value of any fence made or repaired, they shall certify the same, under their oath of office; which division or appraisal being recorded in the book of records, belonging to such town or place, by the clerk thereof, if the original be lost, an attested copy from such records, shall be used instead thereof, and shall be of equal validity with the original. Proceedings to be certified.

§ 6. Where the lands or meadow of any two or more persons shall join each other, each of them shall make and maintain a just proportion of the division or partition fence between them, except such persons as shall choose to let their lands or meadows lay vacant and open; and in case any disputes shall arise, concerning the part or proportion of the fence to be made or maintained, by either party, the same shall be settled by the fence viewers of such town or place where such lands or meadows shall be situated, or any two of them, whose decision shall be conclusive. And if any person shall neglect or refuse to make and maintain his part and proportion of such fence, or shall permit the same to be out of repair, every such person shall be liable to, and shall pay, all and every such damages as shall accrue to his neighbor thereby, to be appraised and estimated by the fence viewers of the same town or place, or any two of them not interested therein, and to be recovered, with costs, in any court having cognizance of the same; and in case the party so neglecting or refusing, shall continue such neglect or refusal, for the space of one month after notice and request to make or repair such fence, then, and in every such case, it shall be lawful for the party injured or aggrieved thereby, to make or repair all the said fence, at the expense of the party so neglecting or refusing, to be recovered, with costs of suit, in any court having cognizance of the same; and in case any person who shall have made his proportion of any such fence, shall conclude or be disposed to throw up his said lands or meadow for common feeding, or to let the same lay open, he shall give three months' notice thereof, to the person in possession of the lands or meadow adjoining; and if such fence shall be removed without giving such notice, or before the expiration of the said three months, then, and in every such case, the person so removing, or General powers of fence viewers.

causing such fence to be removed, shall be liable to make good all such damages, as the party injured or aggrieved by such removal shall sustain thereby, to be recovered as aforesaid, with costs. And if the person in possession of the lands or meadows so adjoining, after notice as aforesaid, and within the three months aforesaid, shall elect to have the said fence continued, the same shall not be removed, and the person so disposed to throw up his said lands or meadows for common feeding, shall have right to the value of his proportion thereof, of the person continuing to improve; and if they cannot agree on the value of such fence, the same shall be ascertained by the fence viewers, in the manner prescribed in the eighth section of this act, and on neglect of payment, after demand actually made, for the space of thirty days, the said party so ceasing to improve, shall recover the full value ascertained as aforesaid, of the person, of the lands so adjoining, by action of the case, with costs.

When fence
destroyed.

§ 7. In all cases where any partition fence shall be injured or destroyed, or carried away by floods or freshets, or by fire, every person who ought, by law, to make or repair the same, shall make or repair the same, or his just proportion thereof, within twenty days after he shall be thereunto required, by any person interested therein. And if any person shall neglect or refuse to make or repair his proportion of such fence, for the space of twenty days after such request as aforesaid, then, and in every such case, it shall be lawful for the party injured or aggrieved thereby, to make or repair all the said fence at the expense of the party so neglecting or refusing, and he may recover the same, with costs, in any court having cognizance thereof.

When occu-
pant to pay
for fence.

§ 8. When one of the owners of lands adjoining shall have begun to improve before the other, and shall have built a fence on the divisional line between them, and afterwards the other shall improve, and shall be advantaged thereby, the occupant, lessor, or proprietor of such land last begun to be improved, shall pay for one half of the partition fence between them, according to the value of it at the time he shall begin to improve; such value to be ascertained (in case they cannot agree) by the fence viewers, on application of either party, the other being notified to attend at the time of making such appraisement, which shall be set down and expressed in writing, and be signed by the fence viewers making the same, and delivered by them to such of the said parties as will receive the same. And if such occupant, lessor or proprietor as aforesaid, shall, after notice as aforesaid, and demand made for the space of sixty days, neglect to pay for a moiety of such fence, the proprietor of such fence, or person who made the same, shall and may recover the sum so ascertained by special action on the case, against such occupant, lessor or proprietor, notified and requested as aforesaid.

Division of
fences.

§ 9. All divisions of fence made by fence viewers, according to the provisions of this act, or made by owners of adjoining lands, in writing, witnessed by two witnesses, signed, sealed and acknowledged by the parties making the same, being recorded in the town or county clerk's office, shall be good and valid against the parties thereto, their heirs and assigns.

Proceedings
when fence
cannot be
built on line.

§ 10. Whenever it shall so happen that any dividing line between the lands of any persons, shall be so situated that a fence cannot be

built on said line, by reason of water, and the owners of the land cannot agree on a place to build the fence, either of the owners may call on the fence viewers, in such town where said land is situated, whose duty it shall be to notify the other owner or owners, when they will attend and examine said line, and if, on examination, the fence viewers find that a fence cannot be built or made to stand directly on the line between such persons' lands, it shall be their duty to survey a line, varying from the original line as little as possible, so as in their opinion, will be equitable between the parties, specifying what part of said fence on the line so run each shall make and maintain as their just proportion; which decision in writing, when recorded in the town or county clerk's office, shall entitle either of the owners of said lands to all the privileges of compelling the other owner to build his proportion of said fence, as is provided in this act. *Provided*, that no title under the statute of limitations shall ever be gained by either party to the land either may occupy, in consequence of varying said line for the purpose above mentioned.

§ 11. Each fence viewer shall be allowed one dollar and fifty cents per day for his services, and seventy-five cents for a half day. And in all cases, except where the same is otherwise ordered and directed, the fees shall be paid by the parties interested; and in all cases where the party or parties, whose duty it is to pay the fence viewers for their service, shall neglect to pay the same, for the space of thirty days after the service done, they may recover double fees, by action on the case, with costs, and each fence viewer may be a witness for or against another fence viewer, who was concerned with him in the same business or service. Compensation of viewers.

§ 12. That in case any two or more farms, situated in any neighborhood, shall have a slough, pond or stagnant water standing thereon, to the injury of the health of such neighborhood, or any farm, in case the owners can not agree, either party may apply to the fence viewers; and it shall be their duty to make an examination of the premises, and make a written order where a drain shall be made, and each owner shall bear an equal share of the expense, in proportion to the amount of land so drained, owned by him. In case any of the owners do not wish to improve said land, he shall not pay any share of such expense, until such time as he may improve; then it may be recovered by the person who first paid for such drain, in the same manner that is provided in this act. May order drain to be made.

AN ACT to permit certain animals to run at large.

§ 1. That all neat cattle, sheep, horses, (except stallions of the age of two years,) and hogs, shall be permitted to run at large in this territory, at all times of the year, and the owner thereof shall not be liable for the damage which any such animal may do, unless the same be done upon enclosed ground, with a legal and sufficient fence, in which case such owner shall be liable in an action of trespass for all the damages done. What animals may run at large.

AN ACT relating to strays.

When stray
may be ta-
ken up.

§ 1. No person shall take up any stray, at any time, unless it be found on his plantation, or on some road or unoccupied land within his township; but no person knowing the owner of a stray to be a resident of the same township with himself shall take up such stray, unless by consent of the owner, or unless it come within his enclosure, or remain on his plantation one week, except in such cases as may be hereinafter mentioned.

1b.

§ 2. If any stallion, gelding, mare, mule, ass, bull, ox or cow, liable to be taken up, come to any person's plantation, any other person of the same township may notify him of the fact; and if he fail to take up such stray, immediately after such notice, such other person may take up said stray, and proceed with it as if taken upon his own plantation.

Duty of per-
son when
owner
known.

§ 3. If any taker up of a stray shall know to whom such stray belongs, it shall be his duty to give notice, within seven days, to the owner, of the taking up of the same, and request him to take it away, after paying all actual damages and reasonable expenses; and if there should be any disagreement, as to the allowance to be made for such damages and expenses, it shall be settled by some justice of the peace of the county, who shall take into consideration, as an offset to such damages and expenses, any use or service the taker up may have had of such stray.

When un-
known.

§ 4. If any person shall take up any stray, not knowing to whom it may belong, he shall, within ten days thereafter, unless it shall have been previously claimed and proved to be the property of the claimant, and a tender made of the compensation allowed, go before some justice of the peace and make oath, as to the manner and place of its being taken up, and that the marks and brands have not been since altered, to his knowledge.

Duty of jus-
tice.

§ 5. The justice shall issue a summons to three disinterested householders, or if it shall seem to him most expedient, under the circumstances of the case, to one such householder only, requiring him or them to make a fair and impartial appraisal of such stray, and a full description of its size, colour, age, mark or brand, to the truth of which such householder or householders shall make oath before said justice.

1b.

§ 6. Such appraisal and description shall be entered by the justice in a book, to be by him kept for that purpose; and within ten days thereafter he shall furnish the taker up with a certified copy of such entry, whose duty shall be to transmit the same to the clerk of the board of county commissioners.

1b.

§ 7. The justice of the peace shall also furnish the taker up with a statement of the duties required by law to be performed by such taker up.

Stray to be
advertised.

§ 8. It shall be the duty of the taker up to advertise at three of the most public places in the township, by posting up written notices, containing a brief description of such stray, as sworn to by the appraisers, and embracing the name and residence of the taker up, and the time at which it was taken up.

§ 9. The clerk of the board of county commissioners, immediately after receiving the certified copy from the justice's stray book, shall record the same in a book, to be by him kept for that purpose. Clerk to record copy.

§ 10. Such clerk shall keep, in some conspicuous place in his office, a list, containing a description of each stray, the place where, and the time when, it was taken up; and shall enter such description, of each stray, on the list, as soon as the certificate is filed in his office; any part of said list may be removed, when it has remained one year. Description to be posted up.

§ 11. The county commissioners shall select and contract with some printer within their county, if there be one, and if not, with any printer within their territory, to print all advertisements of strays, required by law to be published. Contract with printer.

§ 12. It shall be the duty of the county commissioners to cause one insertion of all advertisements of strays sent to them, to be printed by the printer with whom they have contracted, once in each month; and such printer shall send one copy of the paper containing such advertisement, to the clerk of each board of county commissioners with whom he may have contracted. Strays, how advertised.

§ 13. Such clerk shall receive, file and preserve in his office, all such papers sent to him for the inspection of all persons who desire to examine them. Papers filed.

§ 14. If the owner of any stray do not prove property therein according to law, within thirty days from the time the same is taken up, the person taking it up shall pay the clerk all his fees, the necessary postage, the price of advertisement, and all other necessary expenses. Taker up to pay clerk.

§ 15. Any person may use or work a stray, legally taken up by him, if he do so with care and moderation, and not abuse or injure it. Stray may be worked.

§ 16. The owner of any stray, may within one year, from the time of taking up, prove the same by evidence, before a justice of the peace, and upon the payment of all costs, and a reasonable allowance for keeping the same, shall be entitled to recover the stray. If the owner and taker up cannot agree as to the amount of such allowance, it shall be settled by some justice of the peace, who shall take into consideration the trouble and expense of the taker up, and whatever use or service he may have had of such stray. Owner may recover in one year.

§ 17. If after the end of one year from the taking up of any stray, the owner shall appear and prove property therein, and pay all costs and expenses, as above provided, the taker shall pay him the appraisement price of the stray, or at his option, may deliver him the stray. Taker up to pay owner.

§ 18. If any stray, legally taken up, get away or die, without the fault of the taker up, he shall not be liable for the same. When stray dies.

§ 19. If any person sell or barter or take out of this territory any stray before the legal title shall have vested in him, he shall forfeit and pay the owner double its value. Selling stray.

§ 20. If any person unlawfully take up any stray, or if he shall take up any stray and fail to comply with the provisions of this act, or shall keep the same more than ten days out of the county at any one time before he acquires a title to the same, such offender shall forfeit to the county a sum not exceeding thirty dollars. Penalty for unlawfully taking up.

Penalty for
not adverti-
sing.

§ 21. If any person take up any stray and shall refuse to advertise as required by this act, such offender shall forfeit to the county a sum not exceeding fifty dollars.

Penalty on
printer, &c.

§ 22. If any printer, clerk, or justice of the peace fail to perform the duties enjoined on him by this act, he shall forfeit to the county not less than five nor more than fifty dollars, and pay to the party injured not less than five nor more than one hundred dollars, to be recovered before any court having competent jurisdiction.

Duty of per-
son taking
up hog,
sheep, &c.

§ 23. Any person who shall take up any sheep, hog or goat, shall within ten days thereafter, unless it shall have been previously claimed, and property therein proved by the proper owner, and a tender made of the compensation allowed, go before some justice of the peace of the county, and make oath, as is required in the taking up of a stray horse. And such justice shall cause two disinterested householders of the township, to view such stray, who being first sworn, shall describe and appraise such stray. The taker up shall advertise such description and appraisal in three of the most public places in the township in which such strays are taken, and on failure of the claimant's appearing in one year and satisfying the costs of posting, the fees allowed for taking up, and a reasonable compensation for keeping such stray, to be ascertained by two disinterested householders, the taker up shall have a complete title to such property.

Fees of
clerk.

§ 24. The clerk of the county board shall receive the following fees for his services in relation to strays: for recording each certificate of an estray, thirty-seven and one-half cents; for entering on his office-list a description of such stray, thirty-seven and one half cents; whether such certificate contain a description of a greater or less number of animals.

Fees of jus-
tice.

§ 25. The justice of the peace shall receive the sum of thirty-seven and one half cents for each certificate of strays, appraised by his order, and shall put in one certificate all the animals taken up by any one person and appraised at the same time.

AN ACT to prevent stallions in certain cases from running at large.

Stallions not
to run at
large.

§ 1. That it shall be unlawful for the owner or owners of any stallion to permit or suffer any such stallion over two years of age to run at large on the public highways, uninclosed grounds or commons, and out of the proper enclosure of such owner or owners; and the owner or owners of any such stallion who shall permit or suffer the same to run at large contrary to the provisions of this act, shall be fined in a sum not exceeding twenty-five dollars, and not less than ten dollars for each offence, to be recovered by action of debt, together with costs of suit, in any court having jurisdiction of the same, in the name of any person who will sue therefor; the one moiety of the penalty so recovered, to be paid to the prosecutor, and the other moiety to go to the use of the proper county.

Penalty.

Liability of
owner.

§ 2. The owner or owners of any such stallion who shall suffer or permit the same to run at large, contrary to the provisions of this act, shall be further liable for and pay all damages which any person may sustain in consequence of such horse running at large.

§ 3. This act shall take effect on the first day of May, A. D. 1839. Act to take effect.

AN ACT respecting marks and brands for horses, cattle, sheep and hogs.

§ 1. That it shall be the duty of the clerks of the county commissioners, in each county, on the application of any person, resident in the county, to record a description of the marks or brands with which such person may be desirous of marking his horses, cattle, sheep or hogs; but the same description shall not be recorded for more than one resident of the same township. Clerks to record marks, &c.

§ 2. If any person shall wilfully mark any of his horses, cattle, sheep, or hogs, with the same mark or brand previously recorded by a resident of the same township, and while the same mark or brand shall be used by him, the person so offending shall forfeit for every such offence, five dollars, to be recovered by action of debt before any justice of the peace, in the name and for the use of the person whose mark or brand shall be used; and if any person shall wilfully mark or brand the horses, cattle, sheep or hogs of any other person, with his own brand or mark, the person so offending, shall forfeit for every such offence, to the person injured, ten dollars, to be recovered by action of debt, before any justice of the peace, in the name and for the use of such person; and if any person shall wilfully destroy or alter any mark or brand upon any cattle, horses, sheep or hogs, the property of another, the person so offending shall, on conviction thereof before any justice of the peace, forfeit and pay for every such offence a sum not exceeding ten dollars, and shall moreover pay to the party injured double damages. Penalty for using mark of another, &c.

§ 3. That the clerks of the board of county commissioners shall be entitled to receive for recording any mark or brand, twelve and a half cents, and for giving a certificate of the same, when required, twelve and a half cents. Fees of clerk.

AN ACT regulating fisheries.

§ 1. That every person who shall erect across any stream of water any dam or other obstruction to prevent the passage of fish, shall forfeit and pay for the use of the county where such dam or other obstruction may be situated, the sum of twenty dollars for every week during which such dam or other obstruction shall be continued: *Provided*, this section shall not extend to mill dams. Obstructions not to be erected.

§ 2. Every person who shall erect any dam, authorized by law, across any water course, as is mentioned in the next preceding section, shall affix to the same, a slide, chute, or waste-gate, to be left open at all times, when the water shall run over said dam to facilitate the passage of fish over the same, which shall receive a slope as great as three inches in every foot, horizontally; and if any such dam shall be erected, without such slide, chute, or waste-gate, it shall be competent for the grand jury, in the county where the same is erected, to present it as a nuisance; and if such indictment shall be sustained, the court shall direct the same to be removed. Dams to have slides.

AN ACT to regulate ferries.

License to
keep ferry.

§ 1. No person shall keep a ferry, within two miles of any licensed ferry, and receive pay, unless he shall first obtain a license therefor from the county commissioners; and such license may be granted for such time as the commissioners shall think proper, not exceeding three years, and they may revoke the same when necessary.

By whom
granted.

§ 2. The said commissioners may grant licenses to suitable persons, but no such license shall be granted to any person other than the owner of the land through which the highway adjoining said ferry shall pass, unless such owner shall neglect to apply for such licence, after notice as hereinafter provided.

Preference
to whom
given.

§ 3. Whenever application for a license to keep a ferry shall be made by any person other than such owner, the board shall not grant a license to such person, unless proof shall be made that the said applicant caused notice in writing to be given to such owner, at least eight days before the regular session of the board of commissioners, of his intention to make such application.

Grantee to
purchase
boats.

§ 4. If at any time the board of commissioners shall grant a license to a person who has not before kept such ferry, the said grantee shall purchase the boats of the previous keeper, at the appraisal of three disinterested persons appointed by said board, if such appraisers shall adjudge said boats to be good and sufficient for the use of said ferry.

Tolls, how
established.

§ 5. The board of the county commissioners shall establish the fares or tolls at each ferry, for passengers, horses, carriages and other things there transported, always having regard to the length and situation of each ferry, and the number of persons and teams passing the same; the said board shall also direct and determine the several hours in each day and night within which due attendance shall be given by each ferryman, and every ferryman shall have a list of the rates posted on the door of his ferry house.

Security to
be given by
applicant.

§ 6. Every person applying for a license shall, before the same be granted, enter into a recognizance to the United States in such sum as the commissioners may deem proper, with sufficient sureties for the faithful performance of his duties.

Duty of fer-
rymen.

§ 7. Every ferryman shall keep a safe and good boat or boats in good repair, adapted to the waters where they are to be used, and shall give ready attendance on passengers on all occasions, according to the regulations established for his ferry; and for every neglect in keeping such boat or boats or in giving such attendance, he shall forfeit a sum not exceeding twenty dollars, and be further liable in action on the case for all such damages as any person shall sustain by such neglect; and shall at all times when called upon, if the stream is passable, convey the mails and other public express across such ferry.

Their lia-
bility.

§ 8. Any person who shall sustain an injury by the negligence or default of any ferryman, may have a remedy by an action upon the bond required in this act.

Penalty for
ferrying
without li-
cense.

§ 9. If any person without lawful authority shall keep a ferry within two miles of any licensed ferry, and demand pay or toll therefor, he shall forfeit a sum not exceeding five dollars for every day that he shall keep such ferry, and he shall be further liable in an

action on the case to pay such damages as shall be thereby occasioned to any person authorized to keep any established ferry.

§ 10. The clerks of the respective boards of county commissioners shall be entitled to receive for entering each license granted by virtue of this act and for a copy thereof, two dollars.

Fees of clerk.

AN ACT regulating taverns and groceries.

§ 1. That the county commissioners of the several counties of this territory may at any regular or special meeting of the board, grant licenses to the keepers of inns and taverns being residents of their county, to sell strong and spirituous liquors and wines, to be drunk in or out of their houses respectively, and to determine the sum to be paid for such licenses by each person applying, which shall be not less than five dollars nor more than twenty-five dollars.

County commissioners to grant license.

§ 2. The said licenses shall be sealed and attested by the clerk of the board of commissioners granting the same, and shall not be issued until the duty fixed by said board to be paid therefor, shall have been paid, and when issued, such license shall be in force (unless sooner revoked by said board) for the space of one year from the date thereof.

License to be sealed, &c.

§ 3. The said board may at any regular or special session thereof grant licenses, to as many persons as they may think proper, to keep groceries for the sale of strong or spirituous liquors and wines to be drunk in their houses by a quantity less than one quart; the sum to be paid for such grocery license by the person applying therefor shall be one hundred dollars. Such grocery license granted as aforesaid shall be in force for the space of one year from the date thereof, unless sooner revoked by the said board; but no grocery license shall be granted for a less term of time than six months, and when granted for a less term than one year, the sum to be paid therefor shall in no case be less than seventy-five dollars.

Groceries may be licensed.

Price of license, &c.

§ 4. No license shall be granted to any person as an inn-holder or tavern-keeper under the provisions of this act, unless the commissioners are satisfied that the applicant is of good moral character, that he is of sufficient ability to keep a tavern and has the necessary accommodations to entertain travellers, and that a tavern is necessary for the actual accommodation of travellers at the place where such applicant proposes to keep the same, all which shall be expressly stated in every such license.

License not granted in certain cases.

§ 5. No license shall be granted to any tavern-keeper, inn-holder or grocer until the applicant shall have executed and delivered to the commissioners a bond to the county in its corporate name, in such sum as said commissioners may deem requisite, with sufficient securities, conditioned that said applicant during the continuance of such license will not suffer his house or grocery to become disorderly, or allow gaming with cards, dice or other implements used in gaming, within his tavern or grocery so by him kept, or in any out-house or yard appertaining thereto.

Applicant to execute bond.

§ 6. Every tavern-keeper shall keep in his house at least two spare beds for his guests, with good and sufficient covering for such beds, and shall provide good and sufficient stabling and provender of hay in winter, and hay or pasturage in the summer, and grain for four

Tavern-keeper what to keep.

horses or neat cattle, more than his own stock, for the accommodation of travellers; and for every neglect or default in not complying with any of the provisions of this section, such tavern-keeper shall forfeit and pay for every such neglect or default, the sum of five dollars.

Penalty for
selling
strong li-
quors, &c.

§ 7. Any person who shall sell or receive pay for any strong or spirituous liquors, or wines in any quantity, less than one quart, without first having obtained license therefor, according to the provisions of this act, shall forfeit and pay twenty-five dollars for each and every offence.

Not to sell
liquor to mi-
nors, &c.

§ 8. No tavern-keeper or grocer, or other person licensed as aforesaid, shall sell any spirituous liquors, or wines, to any minor, apprentice or servant, under the age of eighteen years, without the consent of the father, mother or guardian of such minor, or the master of such apprentice or servant. Whosoever shall offend against either of the provisions of this section, shall forfeit and pay for each and every offence, twenty dollars, to and for the use of, and to be sued for in the name of such father, mother or guardian of such minor, or master of such apprentice or servant, to be recovered by action of debt, before any court having jurisdiction of the same.

Commis-
sioners to be
notified of
conviction.

§ 9. Whenever any person shall be convicted for any violation of the provisions of this act, it shall be the duty of the justice before whom the same shall be had, to transmit forthwith to the clerk of the board of commissioners of the proper county, a certified copy of the record of conviction and a particular statement of the offence for which the same was obtained.

To revoke
licenses in
certain ca-
ses.

§ 10. The clerk of said board shall cause the person against whom such conviction was obtained, to be notified to appear on the first day of the next session of said board, to show cause why his license that may have been granted to him as aforesaid, [should not be revoked,] at the time in said notice mentioned. The said board shall proceed to inquire into the circumstances of the conviction, and may in its discretion revoke and annul such license; but in case of a second conviction for any violation of the provisions of this act, it shall be the duty of the said board to revoke and annul the license of the person so convicted.

When li-
cense not to
be granted.

§ 11. No license shall be granted to any person whose license shall be so revoked or annulled, for the space of three years from the time of such revocation.

Licenses to
be revoked
in certain
cases.

§ 12. Whenever the board of county commissioners of any county shall be of opinion, that any tavern license granted under the provisions of this act, was obtained by the person applying therefor for the purpose of evading the provisions of this act, regulating grocery licenses, the said board of commissioners are hereby required to revoke and annul such license.

Retailers
may be li-
censed.

§ 13. The county commissioners of the several counties, may also grant license to any person being a resident of their proper county, to sell strong, spirituous liquors and wines, in any quantity not less than one quart, for the space of one year, and they may determine the sum to be paid therefor; which sum shall not be more than seventy-five dollars nor less than twenty dollars; and any person who shall sell any spirituous liquors and wines, in quantities not less than one quart, without having obtained a license therefor, as herein provided,

Penalty for
retailing
without li-
cense.

shall forfeit a sum not more than fifty dollars nor less than ten dollars for each offence.

§ 14. If any tavern-keeper, grocer, or other person, shall sell to any Indian any intoxicating liquor, he shall be subject to a fine of not more than one hundred and fifty dollars, nor less than ten, for each and every such offence; the one moiety of the fine to be paid into the county treasury, and the other moiety to the prosecutor; to be sued for and recovered before any court of competent jurisdiction.

Liquor not to be sold to Indians.
Penalty.

AN ACT to provide for the preservation of the public health.

§ 1. That the president and trustees of any incorporated town or village, the justices of the peace of any town, and the mayor and aldermen of any city in this territory, shall be and constitute a board of health.

Board of health.

§ 2. It shall and may be lawful for the board of health of any city, town or village, or any two justices of the peace in any township in this territory,

Powers and duties of boards.

1st. To take such measures as they may deem effectual for the preservation of the public health in said city, town, village or township, and for this purpose to appoint such and so many persons to aid them in the execution of their powers as they shall think proper.

2d. To stop, detain and examine any person coming from any place infected, or believed to be infected with any contagious or infectious disease, and to cause such person, not being an inhabitant of this territory, to be kept in such manner as not to endanger the public health.

3d. To cause all vessels, boats or other craft, coming from any port or place whatever, to anchor at such distance as they shall determine, from any city, town, village, or other place, and to compel the said vessel, boat or other craft, to remain such time without landing any of the passengers, or any portion of the cargo, as will enable such examination thereof to be made by the officer appointed for that purpose by the board of health or justices.

4th. To issue a proclamation prohibiting or regulating the internal intercourse by land or water, between any city, town or village, or any other place where they shall have reason to believe any contagious or infectious disease is there prevalent.

§ 3. Every person who shall violate any order, or rule, or regulation, made in pursuance of the powers granted to the said board of health, or justices of the peace, shall be guilty of a misdemeanor, punishable by fine or imprisonment, in the discretion of the court before whom the offender shall be tried; provided the fine shall not exceed one hundred dollars, nor the imprisonment three months.

Penalty for violating order of board.

§ 4. The board of health, or justices aforesaid, may, in their discretion, cause any person sick of any contagious or infectious disease, and not being a resident of their respective townships, to be removed to such place of safety as they shall deem necessary for the preservation of the public health.

Sick persons to be removed.

§ 5. The board of health, or any justice of the peace in any city, town or village, shall also have power, on complaint made under

Putrid articles to be removed.

oath, to cause the removal of any unsound or putrid articles found in said city, village or town, whenever they shall deem it necessary to preserve the public health; and may also cause any house, out-house, yard or other place, to be examined; and if the same shall be found, on such examination, to contain any unsound or putrid articles, likely to endanger the public health, or shall require cleansing, they or he shall notify the owner thereof, who shall forthwith remove such unsound [or] putrid articles, and cleanse the said house, out-house, yard or place; and on neglect or refusal shall forfeit and pay for every hour he shall so neglect or refuse, a sum not exceeding ten or less than three dollars; to be recovered in the name of the United States, for the use of the proper township, in any court of competent jurisdiction.

AN ACT to provide for the inspection of certain articles therein mentioned.

County an inspection district.

Inspectors, how appointed.

§ 1. That each organized county in this territory shall constitute an inspection district, and the governor, or the person administering the government of the territory, if in his opinion the same be necessary, by and with the advice and consent of the legislative council, shall appoint for each district for the term of three years, an inspector of shingles, wheat and rye flour, buck-wheat meal, pork, beef, fish, butter, lard, domestic spirits, and pot and pearl ashes, who shall each have the power of appointing so many deputies to act under them as their respective duties in office may require, and for the conduct of the deputy in office the principal shall be accountable and liable.

To take oath and give bonds.

§ 2. That before any inspector or deputy inspector shall enter on the duties of his office he shall take an oath or affirmation that he will faithfully and impartially execute and perform the duties required of him by law, and each inspector shall enter into bonds with sufficient freehold security, to be approved by the county clerk of the district court, in the sum of one thousand dollars, made payable to the treasurer of this territory, which bond shall be lodged with the treasurer of the proper county, conditioned for the faithful and impartial performance of the duties required of him by law.

Suits for neglect, how brought.

§ 3. That any person who may think himself or herself injured by the incapacity, neglect or misconduct of any such inspector, or his deputy, may institute a suit on a copy of such bond, certified by the treasurer of the county for the use of the party suing: *Provided*, That the treasurer shall not be liable for costs, and in case the party suing shall obtain judgment, he may have execution as in other cases, and the bond shall not become void on the first, or any subsequent judgment: *Provided also*, That the said suit shall be instituted within one year after the cause of action shall have accrued.

Shingles, how made and put up.

§ 4. That all shingles offered for sale in this territory shall be from fifteen to eighteen inches in length, and may be sawed or shaved; they shall be not less than one quarter nor more than three-eighths of an inch thick at the butt end when fully seasoned, and not less than four inches wide on an average, and none less than three inches wide, and hold their width three fourths of the way to the

tain end, and bound in bundles, which shall contain each either one thousand or half thousand, or one quarter of a thousand.

§ 5. That it shall be the duty of the inspectors or their deputies within their respective counties to inspect, as the case may be, all wheat or rye flour, buck-wheat meal, butter, lard, pork, fish, pot and pearl ashes and domestic spirits, on application made to him or them for that purpose; and when any wheat or rye flour, buck-wheat meal, butter, lard, pork, beef, fish, domestic spirits or pot and pearl ashes, shall be inspected, the inspectors, or their deputies, shall stamp on the cask containing the same, with branding irons to be provided by the inspector for that purpose, the name of the territory and the name of the county or city where inspected, and also the kind and quality of the article inspected; and every inspector shall make in a book to be provided by him for that purpose, fair and distinct entries of all articles inspected by him or his deputies, with the name of the person or persons for whom each article was inspected.

Duty of inspectors.

§ 6. That all flour and meal shall be packed in well made casks of seasoned timber, twenty-seven inches in length when finished, with a cut head seventeen and a half inches, tightly bound with ten small hoops or six flat hoops, two inches broad, secured with four nails in each end hoop, and three nails in each outward bilge hoop, each barrel to contain one hundred and ninety-six pounds of flour or meal, and half barrels to contain ninety-eight pounds of flour or meal, packed in suitable casks, well hooped, and otherwise good and sufficient, and the tare of each cask, barrel or half barrel of flour or meal, shall be marked on the head of the same by the miller with a marking iron, and the weight of the flour or meal shall be branded on the barrel or cask with a branding iron to be provided for that purpose; and when flour or meal shall be exhibited for inspection the inspector shall bore and search the same with a proper instrument, so as to ascertain if it be sweet, and of the kind and quality marked by the miller, and if he shall judge it sweet and of good quality, he shall plug up the hole tight and cause the same to be branded, as is prescribed in the fourth section of this act; and if on examination the flour or meal shall be found sour, or of bad quality, and not merchantable, it shall be condemned, but if merchantable, though of an inferior quality, or different from that represented by the miller's brand, said brand shall be erased and the proper quality marked thereon by the inspector.

Flour and meal, how packed, &c.

How inspected.

§ 7. That it shall be the duty of the miller, or the mill owners, to brand, or cause to be branded, on the head of each barrel or half barrel, the quality of the flour or meal contained therein, and [the] initial letter of his christian name and his surname in full; or should the mills be owned by more than one person, then the names of such persons or company; and if any miller, mill owners or company shall neglect so to brand the same, he or they so offending, shall on conviction thereof, forfeit and pay for each offence the sum of five dollars for the use of the county; and if any miller, or any other person or persons, shall pack or cause to be packed any bran, shorts, middlings or unmerchantable flour, with intent to defraud any person or persons, the person or persons so offending shall, on conviction thereof, forfeit and pay for every such offence a sum not less than fifty dollars for the use of the county, to be recovered before any court hav-

Miller to brand casks, &c.

Penalty for fraud in packing.

ing competent jurisdiction, and moreover be liable to the action of the party injured for damages.

Beef and
pork barrels
how made.

§ 8. That all barrels for beef or pork shall be made of sound, well seasoned white oak timber, clear of sap, twenty-nine inches in length when finished, with a cut head of seventeen and a half inches in diameter, well bound with at least twelve hoops.

How much
to contain.

§ 9. That each barrel of beef or pork offered for sale in this territory shall contain two hundred pounds weight of sound, clear, well slaughtered meat, and such only as is well fattened, which shall be as follows: "Mess beef" shall be cut as near as may be into well formed pieces of ten pounds each, so that twenty pieces shall make the weight, and shall be well assorted, excluding leg rounds, necks and shoulder clots. "Prime beef" shall be cut in like manner, and shall be well assorted, but may include not exceeding two leg rounds, leaving out the point of the neck, and all clotted pieces; fifty pounds of clean, fair dry salt, and four ounces of saltpetre shall be put into each barrel, and when the barrel is packed and headed up it shall be filled up with strong pickle.

Pork, how
cut and
packed.

§ 10. That each barrel of "prime pork" shall consist of twenty-five pieces, weighing eight pounds each, as near as may be, making two hundred pounds, which may include one head and a half and six shanks, excluding the legs, ears and snouts, so as to be composed of the assorted meat of one hog and a half hog, or in lieu thereof three shoulders, one head and a half, exclusive of legs, snouts and ears, and the remainder in side pieces. Each barrel of "mess pork" shall consist of twenty-five pieces of eight pounds weight each, as near as may be, making two hundred pounds of pork taken from the sides or middlings of hogs, weighing upwards of two hundred pounds each. Each barrel of "navy pork" shall consist of twenty-five pieces of eight pounds each, making two hundred pounds of pork, assorted, excluding all shanks and faces; no hog to weigh less than one hundred and fifty pounds nett; each barrel of "one hog pork" shall consist of twenty-five pieces of eight pounds weight each, so as to make two hundred pounds of pork, and may include two hams, two shoulders and one head, excluding legs, snouts and ears; the pieces of pork shall be packed on the edge, with at least fifty pounds of clear, fair salt to each barrel, and when thus packed and headed shall be filled with strong pickle.

Beef and
pork barrels
how made.

§ 11. That all half barrels for beef or pork shall be made of sound well seasoned white oak timber, clear of sap, twenty-four inches long, with a cut head fourteen inches in diameter, well bound with at least twelve hoops.

Butter and
lard, how
packed,
marked, &c.

§ 12. That all butter and lard shall be packed in well seasoned and tight firkins or kegs of sound timber, on each of which shall be marked with a marking iron the tare and nett weight of the butter or lard therein contained; and the inspector or his deputy shall bore each firkin or keg of butter or lard, and by examining diagonally from one head to the other with a hollow instrument or searcher, so as to be able to discover the quality of the whole and ascertain that it be clear of mould, rancid or musty taste, in which case he shall brand the same as is provided in the fourth section of this act.

Pot and pearl
ashes, how
packed.

§ 13. That all pot and pearl ashes subject to inspection shall be put in casks of good seasoned white oak or white ash timber, well

made, hooped with substantial hoops for at least ten inches from each end; the staves not to be less than thirty inches in length, and the head of the said pot and pearl ash barrels shall not be less than twenty-inches in diameter; and no cask or barrel shall be tared less than fifty-six pounds; and casks weighing fifty-six pounds or more shall be tared their weight; and it shall be the duty of every inspector to empty the casks containing ashes brought to him for inspection and examine and determine the quality and re-pack the same, and brand or mark the head of each cask in the manner prescribed in the fourth section of this act.

Size of barrel.

§ 14. That all the barrels or casks containing domestic spirits shall be made of good well seasoned white oak timber clear of sap, bound with not less than twelve good and sufficient hoops.

Spirit barrels, how made.

§ 15. That it shall be the duty of every inspector to provide himself with the most common and approved instrument for ascertaining the capacity of a barrel or cask, and the quality or proof of spirituous liquors, and to keep the same in good order; and when called upon for that purpose shall immediately gauge or ascertain the capacity and contents of any barrel or cask, or the quality and proof thereof, and mark on such barrel or cask the true quantity the barrel or cask will contain in gallons, the amount of wantage and the quality or proof of such domestic spirits, with the name of the territory and of the county or city where inspected; and each inspector shall write in a book to be kept by him for that purpose, an entry of all domestic spirits inspected by him and his deputies, with the name of the person for whom the same was inspected.

Duty of inspector.

§ 16. That all fish hereafter sold in barrels or casks in this territory shall be contained in barrels or casks of the description hereafter specified, and before offered for sale shall be inspected by some inspector appointed under the provisions of this act, who shall, immediately on application for that purpose, either by himself or his deputy, attend and perform the duties of his appointment, and make and keep entries thereof, as provided in the second section of this act.

Fish to be inspected.

§ 17. That all fish barrels or casks shall be made of good sound seasoned timber, clear of sap, well bound with twelve sufficient strong hoops or eight flat hoops, at least two inches broad, and shall contain at least two hundred weight of clean fish in each barrel or cask, and only one species of fish shall be packed or put into the same barrel or cask; and previous to any two hundred pounds weight of fish being packed or barrelled as aforesaid, said fish shall be corned down with sufficient salt for at least twelve hours before inspection, and when inspected shall be thoroughly examined, cleaned, and packed with sufficient good clean salt to each barrel or cask for the preservation of the same. *Provided*, That white fish may be cleaned and immediately packed as aforesaid, without being previously corned down as aforesaid.

Fish barrels, how made.

How much to contain, &c.

§ 18. That it shall be the duty of every inspector, when inspecting any fish under the provisions of this act, to cause the same to be carefully opened and examined, and ascertain that such fish have been properly corned, and that the same are clean, and of one species, and of good quality; and shall cause the same to be packed in good and sufficient barrels or casks, and the requisite quantity of salt applied as hereinbefore required, and shall brand the same on the

Duty of fish inspector.

head of each barrel or cask, with the word Wisconsin, and the name of the county or city where inspected, the species of the fish, the word and figure No. 1 or No. 2, as the same may be, of the first or second quality, and the initial letters of such inspector's christian name, and his surname in full.

What fish to be inspected

§ 19. That any person or persons taking in the waters of this territory any fish, or bringing or importing into this territory any fish taken in any waters without this territory, shall immediately on bringing said fish on shore, or importing the same into any county or port in this territory, except shad, mackerel, herring or codfish, and before any part thereof are sold or bartered, in barrels or casks, or offered for sale or barter, in this territory, cause such fish to be inspected and branded by the inspector at or nearest the port or place at which the same are landed, or brought into this territory.

Penalty for selling fish without inspection.

§ 20. That every person or persons neglecting to comply with the provisions of the next preceding section, shall forfeit and pay for each and every barrel or cask of fish so by him, her, or them sold, or offered for sale or barter, within this territory, without being inspected and branded as aforesaid, the sum of two dollars, to be recovered in an action of debt, before any court having jurisdiction thereof, with costs of suit, in any county in this territory; which suit may be prosecuted in the name of the territory, for the use of the county where the suit is brought.

Inspector's duty when articles not well packed.

§ 21. That if on view, the inspector or his deputies, who shall be called upon for that purpose, shall find that any of the firkins, barrels or kegs heretofore mentioned, should not be sufficient, and made in conformity with the provisions of this act, such inspector or his deputy shall desist from any further inspection of the contents, and judge the same unmerchantable, and thereupon condemn and mark said barrel or cask accordingly: *Provided*, That nothing in this section contained shall be so construed as to prevent a repacking of such articles in proper and sufficient casks or barrels, and when done may be inspected and passed, if found good and merchantable, as in other casks under this act.

Penalty for neglect.

§ 22. That if any inspector or deputy inspector shall fail or neglect to do the duties of his office, or shall be convicted of partiality, or of having acted contrary to the direction of this act, he shall forfeit and pay for every such offence a sum not exceeding one hundred dollars, with costs of suit, to be recovered before any court having jurisdiction thereof, for the use of the county; and shall moreover be liable to the party injured, for damages.

Penalty for counterfeiting brands.

§ 23. That if any person or persons shall counterfeit the aforesaid brands or marks, or either of them, or impress such counterfeit brands or marks on any cask, barrel, firkin or keg, containing articles subject to inspection by this act, he, she, or they, so offending, and being duly convicted thereof, shall be deemed guilty of forgery, and shall be dealt with accordingly.

Fees of inspectors.

§ 24. That inspectors to be appointed under this act shall receive the following fees for their services, viz: for each barrel of wheat flour or rye flour, three cents; for each barrel of buck-wheat meal, three cents; for each barrel or cask of domestic spirits, fifteen cents; for every keg of butter or lard, six and a quarter cents; for packing and inspecting every barrel of pork or beef, twenty-five cents, for

every half barrel, fifteen cents; for packing, inspecting and examining every barrel of fish, fifteen cents; and for inspecting every barrel of pot or pearl ashes, thirty-seven and one-half cents; for examining and inspecting every thousand of shingles, six and one-fourth cents; which fees shall be paid by the seller: and no barrel, cask, firkin or keg, containing articles subject to inspection under this act, shall be inspected the second time, unless upon the application of both seller and purchaser, in which case the fees shall be paid equally between them.

§ 25. That if any inspector or deputy inspector shall demand and receive any greater sum than is provided in the next preceding section, or shall directly or indirectly purchase any article by him condemned as unfit for exportation or sale, or in any wise unsaleable, he shall forfeit and pay for every such offence, a sum not exceeding one hundred dollars, together with costs of suit, to be recovered before any court having jurisdiction thereof, for the use of the county where such offence was committed.

Penalty for demanding unlawful fees, &c.

§ 26. That every person who shall import into this territory any shingles, wheat or rye flour, buck-wheat meal, butter or lard, pork or beef, fish or domestic spirits, and offer the same for barter or sale, without first having the shingles, and wheat or rye flour, buck-wheat meal, butter, lard, pork, beef, fish or domestic spirits, inspected by some inspector appointed under the provisions of this act, shall, on conviction thereof, before any court having jurisdiction thereof, forfeit and pay a sum not exceeding one hundred dollars, to be sued for and recovered in the name and for the use of the county where the offence was committed.

Penalty for selling without inspection.

§ 27. That it shall be the duty of every inspector or his deputy, when called upon for that purpose, to inspect all domestic spirits, and brand every barrel, keg or cask, with the letter "P," if the said spirits shall be hydrometer proof; and with the figures 1, 2, 3, &c. and the letter "A," if the liquor is above hydrometer proof; and with the letter "B," and the figures 1, 2, 3, &c. if the same is below hydrometer proof.

Domestic spirits, how inspected.

AN ACT to establish the rate of toll for grinding.

§ 1. That the owners or occupiers of all grist-mills in this territory moved by water, wind or steam, shall be entitled to one-eighth part of all wheat, rye or other grain, ground and bolted; the one-tenth part of all wheat, rye or other grain ground and not bolted: *Provided*, That the owners or occupiers of grist-mills in the counties of Milwaukee, Racine, Rock, Washington, Dodge and Jefferson, shall be entitled to only one-tenth part of all wheat, rye, or other grain, ground and bolted, and one-twelfth part of all wheat, rye, or other grain ground and not bolted; and the one-eighth part of all corn ground in said mills; and the owners or occupiers of all mills moved by animal power, shall be entitled to one-eighth part of all wheat, rye, or other grain or corn, ground only, or ground and bolted, at such mills, when the owner or occupier thereof shall not find the team to grind the same; but when the owner or occupier thereof shall find the team, then such owner or occupier thereof shall be entitled to one-fourth part of all wheat, rye, or other grain or corn, ground, or ground and bolted. In the counties of Grant and Iowa, the owner or occupier

Rates of toll allowed.

Proviso.

of any mill shall be entitled to receive the one-sixth of all corn ground and not bolted.

Grain to be ground in due turn.

Liability of miller.

§ 2. That all millers shall well and sufficiently grind the grain and corn brought to their mills, and in due turn as the same shall be brought, but may grind their own grain and corn at any time; and shall be accountable for the safe-keeping of all grain and corn received in such mills for the purpose of being ground therein, and shall deliver the same when ground, or ground and bolted, as the case may be, with the bag or cask, when demanded: *Provided*, That the bag or cask left as aforesaid, be distinctly marked with the initial letters of the name of the owner thereof, and provided that nothing herein shall be so construed as to charge the owner or occupier of any mill, or to make him accountable, for the loss of any grain or corn, bag or cask, which shall happen by robbery, fire, or any accident, without the default or neglect of any such owner or occupier.

Penalty, &c.

§ 3. That every miller, owner, or occupier of a mill, who shall not well and sufficiently grind as aforesaid, or not in due turn as the same shall be brought, shall for every such offence forfeit and pay three dollars to the party injured, to be recovered by action on the case, with costs, before any justice of the peace of the county, and shall moreover be liable to the suit of the party injured, for damages.

Measures to be provided.

§ 4. That every owner or occupier of a grist-mill shall provide sealed measures, namely, one half bushel, peck, half peck, two quart, one quart and one pint, with an instrument with a plane surface, to strike such measures; and if any owner or occupier as aforesaid, shall make use of any false measure or instrument, he shall be liable to the same penalty, and in the same manner, as is before provided in this act.

Machines for weighing, &c.

§ 5. That every miller occupying and using a grist-mill, shall be provided with suitable machines to weigh corn, grain and meal, to and from the mill if required; and if he shall neglect to keep himself so provided, and shall refuse so to weigh corn, grain or meal, when required, he shall for every such neglect or refusal, forfeit and pay to any person who shall sue for the same, a sum not exceeding five dollars, to be recovered in an action on the case.

Penalty for exacting unlawful toll.

§ 6. That every miller, owner or occupier of a mill, who shall exact more toll than is herein allowed by this act, shall upon conviction thereof, be subject to a fine of not less than fifty dollars, or thirty days' imprisonment in the county prison, or both, at the discretion of the court.

Act to take effect.

§ 7. This act shall be in force from and after the first day of May next.

AN ACT for the relief of the poor.

Who to have superintendence of poor.

§ 1. That the board of county commissioners of the several counties of this territory, shall be and they are hereby vested with entire and exclusive superintendence of the poor, in their respective counties.

What relatives to support poor person.

§ 2. Every poor person, who shall be unable to earn a livelihood, in consequence of bodily infirmity, idiocy, lunacy, or other unavoidable cause, shall be supported by the father, grand-father, mother, grand-mother, children, grand-children, brothers or sisters of such poor person, if they, or either of them, be of sufficient ability; and

every person who shall fail or refuse to support his or her father, grand-father, mother, grand-mother, child or grand-child, sister or brother, when directed by the board of commissioners of the county where such poor person shall be found, whether such relative reside in the county or not, shall forfeit and pay to the county commissioners, for the use of the poor of their county, the sum of fifteen dollars per month, to be recovered in the name of the county commissioners, for the use of the poor as aforesaid, before any justice of the peace, or any court having jurisdiction: *Provided*, That when any person becomes a pauper from intemperance, or other bad conduct, he shall not be entitled to support from any relation, except parent or child.

§ 3. The children shall be the first called on to support their parents, if there be children of sufficient ability; if there be none of sufficient ability, the parents of such poor person shall be next called on; and if there be no parents or children of sufficient ability, the brothers and sisters shall be next called on; and if there be no brothers and sisters, the grand-children of such poor person shall be called on, and then on the grand-parents; but married females, whilst their husbands live, shall not be liable to a suit.

In what order relatives liable.

§ 4. When any such poor person shall not have any such relatives, in any county in this territory, as are named in the preceding sections, or such relative shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require out of the county treasury; and the county commissioners may either make contracts for the necessary maintenance of the poor, or appoint such agents as they may deem necessary, to oversee and provide for the same.

When to be relieved out of county treasury.

§ 5. When any minor shall become, or be likely to become chargeable to the county, either because of being an orphan, or because the parents, or other relations as aforesaid, are unable or refuse to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice to some respectable householder of the county, by written indenture, which shall bind such minor to serve as an apprentice, and shall, in all respects be to the tenor and effect as required in the act concerning apprentices.

When minors bound to service.

§ 6. When any non-resident, or any other person, not coming within the definition of a pauper, shall fall sick, in any county of this territory, not having money or property to pay for his board, nursing and medical aid, it shall be the duty of the overseers of the poor of the proper township, on complaint being made, to give, or order to be given, such assistance to such poor person as they may deem just and necessary; and if said sick person shall die, then the said overseers shall give, or order to be given to such person, a decent burial; and the said overseers shall make such allowance for board, nursing, medical aid, or burial expenses, as they shall deem just, and equitable, and order the same to be paid out of the county treasury.

When relief given to persons not paupers.

§ 7. When application is made, by any pauper, to the board of commissioners of any county in this territory, for relief, it shall be necessary for said commissioners to require of said pauper satisfactory evidence that he has been a resident of said county, for twelve months immediately preceding the day upon which such application is made.

Residence required.

§ 8. When on application, made by any pauper, to the board of commissioners as aforesaid, it shall appear, to the satisfaction of said

Relief, when to be given.

When applicant removed.

board, that the person so applying for relief has resided in said county agreeably to the provisions of the foregoing section of this act, he shall be entitled to all the relief provided by this act; but if on the contrary it shall appear, to the satisfaction of said board, that said pauper has not been a resident of said county agreeably to the provisions of the seventh section of this act, they shall proceed to remove from their county, at the expense of said county, such pauper, to the county where said pauper may have had his residence, or may, if they think best, issue a notice directed to some constable of the county, which notice said constable shall serve forthwith on said pauper, requiring him to depart said county forthwith; and after so serving said notice, by reading the same to said pauper, said constable shall, within five days thereafter, return the same to the clerk of the board of commissioners issuing the same, noting the time and manner of serving the same thereon.

When not to be relieved,

§ 9. After service of such notice as aforesaid, no pauper shall be entitled to relief from such county, any law or custom to the contrary notwithstanding.

Work-house may be erected.

§ 10. The board of county commissioners, of any county in this territory, may, if they think proper, cause to be built or provided, in their respective counties, work-houses for the accommodation and employment of such paupers as may, from time to time, become a county charge; and said work-house and paupers shall be under such rules and regulations as said boards of commissioners may deem proper and just.

Penalty for bringing pauper into territory.

§ 11. If any person shall bring and leave any pauper, in any county in this territory, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars, for every such offence, to be sued for and recovered, by and to the use of such county, by action of debt, before any court having jurisdiction of the same.

AN ACT concerning apprentices and servants.

Minors may bind themselves, with consent of parents, or two justices.

§ 1. That every person bound by indenture, of his or her own free will, and with the consent of his or her father, or if he be dead, of the mother or guardian, and to be expressed in such indenture, and signified by such parent or guardian sealing and signing the same indenture, and not otherwise, or by any two justices of the peace, as hereinafter directed, to serve as clerk, apprentice or servant, in any profession, trade or employment, until the age of twenty-one years, or for any shorter time, although such clerk, apprentice or servant, shall be within the age of twenty-one years at the making of any such indenture, shall be bounden to serve for the term in the indenture specified, as fully as if the same clerk, apprentice or servant, was of full age at the making of the same: *Provided always*, That it shall be lawful for any male infant under the age of twenty-one years, or any female infant under the age of eighteen years, and who shall have no parents living, nor any guardian, by and with the approbation of two justices of the peace of the county in which he or she may reside, to bind himself or herself an apprentice as aforesaid, until such infant, if male, shall arrive at the age of twenty-one years, and if a female, to the age of eighteen years; which

approbation shall be endorsed on the indenture and every such indenture shall be valid and binding.

§ 2. The county commissioners in the several counties may bind out any child under the age above specified who shall be sent to any county poor-house, or who is or shall become chargeable, or whose parent or parents are or shall become chargeable to such county, to be clerks, apprentices or servants, until such child, if a male, shall be twenty-one years old, or if a female, shall be eighteen years old; which binding shall be as effectual as if such child had bound himself with the consent of his father.

When county commissioners may bind out children.

§ 3. Whenever any child shall be bound out by the county commissioners of any county, or by the overseers of the poor of any city or town, the indentures shall contain an agreement on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write, and to be instructed in the general rules of arithmetic.

Child bound out to be educated.

§ 4. When the father of any child is not in legal capacity to give the consent aforesaid, the mother of such child shall have the same power to give such consent as if the father was dead.

Mother may give consent in certain cases.

§ 5. The age of such infant so inserted in the said indenture (in relation to the continuance of his or her service) shall be taken to be *prima facie* evidence of his or her true age.

What to be evidence of age of child.

§ 6. On complaint being made on oath by any master touching any misdemeanor or ill behavior of any such person to any two justices of the peace of the county, or to the mayor, recorder and alderman of any city, or any two of them, it shall be their duty to cause the person complained of to be brought before them, and to hear, examine and determine the complaint.

Proceedings in case of ill behavior of apprentice.

§ 7. If the complaint appear to be well founded, the said officers may by warrant commit the offender to the house of correction, or to the common jail of the county, for any term not exceeding one month, there to be employed in hard labor, and to be confined in a room with no other person; or they may, by a certificate under their hands, discharge the offender from his service, and the master from all obligations to such offender.

§ 8. It shall and may be lawful for any three or more justices of the peace in any county, upon any complaint or application, by any apprentice or servant, touching or concerning any misusage, refusal of any necessary provisions or clothing, cruelty or other ill treatment of or toward such apprentice or servant, by his or her master or mistress, by precept under their hands, to summon such master or mistress to appear before such justices at a reasonable time and place, to be named in such summons; and such justices shall and may examine into the matter of such complaint; and upon proof thereof, made upon oath to their satisfaction, (whether the master or mistress be present or not, if service of the summons be also upon oath proved,) said justices may discharge such apprentice or servant, by warrant or certificate under their hands, for which warrant or certificate no fees shall be paid.

In case of cruelty on part of master.

§ 9. If any person shall think himself aggrieved by such determination, order or warrant of such justices as aforesaid, (except an order of commitment,) such person may appeal to the next district court, to be holden in and for the county where such determination

Appeal allowed to district court, &c.

or order shall be made, such person giving six days' notice of his intention of bringing such appeal, and of the cause and matter thereof, to such justices of the peace, and the parties concerned, and entering into recognizance within three days after such notice, before some justice of the peace in such county, with sufficient security, conditioned to try such appeal at, and abide the order and judgment of, and pay such costs as shall be awarded by the said court; which said court upon due proof upon oath, of such notice being given, and of entering into such recognizance as aforesaid, shall and are hereby directed to proceed in and hear, and finally determine the causes and matters of all such appeals, and give and award such costs to any of the respective parties, as they in their discretion shall judge proper and reasonable, not exceeding twelve dollars; the same to be levied by distress and sale of the goods and chattels of such person against whom such determination shall be made; and their judgment therein shall be final and conclusive to all parties concerned; and if the servant or apprentice shall be found to be delinquent, he or she shall be sentenced by the said court, to serve, at its discretion, so much longer time as the court shall deem proper.

Journeyman
acc. not to be
bound not to
set up trade,
&c.

§ 10. No person shall accept from any journeyman or apprentice, any contract or agreement, nor cause him to be bound by oath or otherwise, that after his term of service expired, such journeyman or apprentice shall not set up his trade, profession or employment in any particular place, shop, house or cellar; nor shall any person exact from any journeyman or apprentice, after his term of service expired, and money or other things, for using and exercising his trade, profession or employment in any place.

AN ACT to secure religious societies within this territory in the possession of their churches, and other property.

Lands conveyed
how to
descend.

§ 1. That all lands conveyed by deed, devise or otherwise to any trustee or trustees for the use of any religious society within this territory for the purposes of erecting a house or houses of worship, for the minister to live in, or for a burying ground, shall descend in perpetuity to their successors in office appointed by said societies respectively, according to their respective rules and regulations, for ever, for the use and purposes above stated.

Powers of
trustees re-
lative to
lands.

§ 2. The trustee or trustees of any religious society holding lands as provided for in the first section of this act, shall have the same right, privilege and power to improve and defend such lands in law and equity that individuals have to improve and defend their individual property; provided the quantity of land so held shall not exceed three acres in any one village, town or township, by any one society, and the improvements shall not extend to more than a church, school-house and parsonage, with their necessary improvements.

Limitation.

Property ex-
empt from
tax.

§ 3. The said church, school-house and parsonage, with the land thereto belonging, shall not be subject to taxation for any purpose except for its own improvement.

Act repea-
led.

§ 4. An act to provide for the incorporation of religious societies, approved July 31, 1830, and all other acts contravening this act, are repealed. This act to take effect from and after its passage.

AN ACT to establish common schools.

§ 1. Every town in this territory containing not less than ten families shall be a school district, and shall be provided with a competent schoolmaster or mistress to instruct children. Towns to be school districts.

§ 2. The legal voters of all towns respectively, shall annually, at the time and place of holding general elections in such town, or at such other time and place as the county commissioners may direct, elect by ballot five persons to be inspectors of common schools in said town, whose duty it shall be to examine such teachers as may be employed in said town, and approve or disapprove of them, and to visit the several schools in their respective towns quarterly or oftener, if by them deemed expedient. School inspectors how elected.

§ 3. Three or more such inspectors shall be competent to examine teachers, and visit and inspect the schools within their town as to the proficiency of the scholars and the good order and regularity of such schools; and they shall have power to hear any complaint made against any teacher, and to discharge such teacher if in their opinion his conduct and qualifications are such as shall require such discharge. To examine teachers, schools, &c

§ 4. Every teacher employed in any school district, shall first procure a certificate from the inspectors that he is duly qualified to teach the school in which he may be employed, and is of good moral character; and any teacher who shall teach any district school without such certificate, shall forfeit and pay a sum not exceeding fifty dollars, to be recovered in any court of competent jurisdiction, one moiety thereof to the informer and the other to the use of the district in which such school is situated. Teachers to procure certificate. Penalty for neglect.

§ 5. If any town shall contain more than ten families, the county commissioners are authorized to divide the same into two or more school districts; and if any county shall not be divided into towns, they shall have authority to divide the county into school districts, and to provide for the election of inspectors in each district containing not less than fifty families. School districts how formed.

§ 6. The school inspectors shall take charge of all school-houses, and keep the same in repair within their respective towns or districts, and lease the school lands, in the same for such term, not exceeding three years, as they may judge for the best interests of the inhabitants in such districts, and at such rent as they may deem expedient, to be paid and expended towards the support of schools in the same districts; they may also prosecute suits for trespass on such lands or damage done to school-houses, and make sale of the fallen timber thereon for the use of the districts respectively. Inspectors to keep school houses in repair, &c.

§ 7. For the erection of suitable buildings and the support and maintenance of schools in any county, the county commissioners shall levy an annual tax of not more than one-quarter of one per cent on the real property in such county upon the assessment roll made by the county assessor for the same year, and to include the same in their warrant to the collector; and the said collector shall proceed to collect the said tax in the same manner the county revenue is by law collected; and the said money so collected shall be paid into the county treasury, subject to be appropriated in the manner and for the purposes mentioned in this act, and no other. Tax for schools how levied.

Return of
scholars to
be made by
inspectors.

§ 8. For the purpose of enabling the county commissioners to make a proper apportionment of the school fund, the inspectors in the several school districts shall annually make a return to said commissioners on or before the first Monday of March, which return shall state the names and ages of the several scholars, and the length of time they respectively attended school; and each district shall be entitled to a share of such fund in proportion to the number of scholars in such districts according to said returns.

Money how
paid out.

§ 9. The said commissioners shall immediately after the returns made by such inspectors, make such apportionment among the several districts, and the money thus apportioned shall be paid out by the county treasurer on the orders of the school inspectors of the proper district, for the pay of teachers and the erection and repairing of school-houses in such district exclusively.

Not to be
paid in cer-
tain cases.

§ 10. No school district shall be entitled to receive any portion of the fund for such apportionment, unless a school shall have been kept in such district for the term of three months at least, during the preceding year, and the same shall appear by the return and certificate of the school inspectors.

Co. com. to
appoint in-
spectors.

§ 11. If any town or district shall neglect or refuse to elect school inspectors at the time appointed, or if any vacancy shall occur in the office of school inspector, it shall be the duty of the county commissioners to appoint the proper number of competent persons in such town or district, to act as school inspectors until the next annual election, or until others may be elected or appointed in their stead.

Penalty for
neglect by
inspectors.

§ 12. If any persons elected or appointed school inspectors, shall neglect or refuse to perform the duties enjoined by this act, or shall neglect to take charge of the school lands, or houses within their respective district, the person so neglecting or refusing shall be liable to a fine of twenty dollars, to be recovered by action of debt, in the name of the county commissioners, for the use of the school district in which said persons may have been appointed.

Commis-
sioners ap-
pointed to
take charge
of schools.

§ 13. If there are any of the school sections in any county not included within any school district, the county commissioners are authorized to appoint five competent persons to take charge of and lease, or otherwise control said lands in the same manner school inspectors might do, and a majority of the persons appointed to perform any duty under this act, shall be authorized to perform said duty.

Trustees of
schools may
be elected.

§ 14. It shall be competent for the legal voters in any school district, to elect, in their school district, annually, three persons trustees of schools in such district, a majority of whom shall be authorized to examine teachers, prescribe the course of study in any school in said district, and to visit the schools in such district in the same manner the school inspectors might or could do; and in case such trustees shall be elected in any district, the power of the school inspectors over the employment or discharge of teachers in such district shall cease during the continuance in office of such trustees.

Embezzling,
concealing,
or misapply-
ing money.

§ 15. If any person or persons, entrusted with the care and management of any money or other property belonging to any county, town, or district school, shall embezzle, misapply or conceal the same, or any part thereof, he or they shall be liable to be removed from his or their trust, and may be sued in an action of account by the other trustee or trustees of the school to which such money, land,

or other property so embezzled, misapplied or concealed, belonged ; and the trustee or trustees so suing, shall recover judgment in double the sum so embezzled, misapplied or concealed, for the use and benefit of such school, together with double costs.

AN ACT regulating marriages.

§ 1. That it shall be lawful for any justice of the peace, within his proper county, and for any ordained minister of the gospel in regular communion with any society of christians, (but not otherwise,) judges of the supreme court, and supreme court commissioners, to solemnize the rites of marriage between persons competent to make the contract of marriage : *Provided*, That the male shall be eighteen years of age, and if under the age of twenty-one years, shall obtain the consent of his parents or guardian ; and the female shall be fourteen years of age, and if under the age of eighteen years, shall obtain the like consent : *And provided further*, That they shall not be nearer of kin than first cousin, and shall not have a husband or wife living.

Who may solemnize marriages

Who may marry.

§ 2. Ministers of the gospel, ordained and in regular communion as aforesaid, before they shall be deemed authorized as aforesaid, shall file a copy of their credentials of ordination with the clerk of the district court of the county, in which any marriage by them may be solemnized ; and such clerk shall enter the same of record and give a certificate of the same.

Ministers to file credentials of ordination.

§ 3. When a man having by a woman one or more children, shall afterwards intermarry with such woman, such child or children, if recognized by him, shall be thereby legitimized. The issue also of marriages declared null in law, shall, nevertheless, be legitimate.

Legitimacy of children.

§ 4. The clerks of the district court for the several counties, or any justice of the peace, shall be authorized to grant marriage licenses, and shall inquire of the party applying, (upon oath or affirmation, as the case may be,) relative to the legality of such contemplated marriage, and if the clerk or justice shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license ; and if any of the persons intending to marry shall be under age, and shall not have had a former wife or husband, the consent of the parents or guardians (as the case may be) shall be personally given before the clerk or justice, or certified under the hand of such parent or guardian, attested by two witnesses, one of whom shall appear before said clerk or justice and make oath or affirmation (as the case may be) that he saw the parent or guardian, whose name is annexed to such certificate, subscribe and acknowledge the same ; and the clerk or justice is hereby authorized to administer such oath or affirmation, and may thereupon issue and sign such license ; and if any clerk or justice shall in any other manner issue or sign any marriage license, he shall forfeit and pay a sum not exceeding one thousand dollars to and for the use of the party aggrieved.

Who may grant marriage licenses.

To whom to be granted.

§ 5. A certificate of every marriage shall be signed by the person solemnizing the same, and be transmitted, together with the marriage license, to the clerk of the district court of the county wherein the marriage was solemnized, within three calendar months thereafter, and recorded by such clerk. Every person failing to transmit

Certificate of marriage

Penalty for neglect.

such certificate to the clerk of the district court of the county in due time, shall forfeit and pay fifty dollars for the use of the county; and if the clerk shall neglect to record the same, he shall forfeit and pay fifty dollars for the use of the county.

Penalty for solemnizing marriages contrary to law.

§ 6. If any person, by this law authorized to join persons in marriage, shall knowingly solemnize the same contrary to the true intent and meaning of this act, the person so offending shall, upon conviction thereof, forfeit and pay any sum not exceeding one thousand dollars, to and for the use of the county wherein such offence may be committed; and if any person not legally authorized shall attempt to solemnize the marriage contract, such person shall, upon conviction thereof, forfeit and pay five hundred dollars to and for the use of the county wherein such offence may be committed.

Fine, &c. how recovered.

§ 7. Any fine or forfeiture arising in consequence of any breach of this law, shall be recovered by action of debt with costs of suit, in any court having cognizance of the same.

AN ACT concerning divorce.

Divorces, for what cause decreed.

§ 1. That divorces from the bond of matrimony shall be adjudged and decreed for the following causes, to wit: 1. Impotency. 2. Adultery. And divorces from bed and board shall be adjudged and decreed for the following causes, to wit: 1. Extreme cruelty. 2. Wilful desertion of either party for two years. 3. The abandonment of the wife by the husband, or his refusal or neglect to provide for her. 4. Habitual drunkenness. *Provided, however,* That divorce from the bonds of matrimony may be decreed for these latter causes at the discretion of the court.

Petitioner to reside in territory.

§ 2. That no divorce shall be granted, except in cases of adultery, unless the petitioner for such divorce shall prove his or her residence in the territory for one year next preceding his or her application.

Divorce not granted where collusion.

§ 3. That no divorce shall be adjudged and decreed where the complaint is founded on collusion of the parties, or where the party complaining is guilty of the crime set forth in his or her petition.

Provision when divorce for adultery of wife.

§ 4. That when the divorce shall be decreed for the adultery of the wife, the husband shall have the personal estate forever, and the real estate of the wife during his life, in case they have had issue born alive of her body during the coverture, otherwise during her natural life only, if he shall survive her. *Provided, nevertheless,* That the court may allow for her sustenance so much out of the personal or real estate, as they shall judge necessary.

Wife not to have dower in that case.

§ 5. That a wife being a defendant, and convicted of adultery as aforesaid, shall not be entitled to dower in the husband's real estate, or any part thereof, nor to any distributive share in his personal estate on his dying intestate.

Provision when divorce for adultery of husband.

§ 6. That when the divorce shall be decreed for the adultery of the husband, the wife, if there be no issue living at the time of the decree, shall be restored to all her lands, tenements and hereditaments, and be allowed out of the personal and real estate, or both, of the husband, such alimony as the court shall think reasonable, not exceeding the use of one moiety of his real estate during the life of the wife, and the property of one-half of his personal estate, having regard to the personal property which came to the husband by the mar-

riage and his ability; but if there be issue living at the time of the decree, the court, with regard to ordering restitution, or granting alimony as aforesaid, may do as they shall judge the circumstances of the case may require, and upon the application of either party may, from time to time, make such alterations therein as may be necessary.

§ 7. That all applications for divorce may be made to the district court of any county in the territory. The petition shall state the names and ages of the parties, the cause (being one of the preceding causes enumerated,) on which the prayer of the petition is founded, and shall request the court to inquire into the truth of the facts set forth, and that if found, on due evidence, to be true, a decree of divorce may be made. Applications for divorce how made, what to state, &c.

§ 8. That the courts aforesaid shall be and they are hereby authorized to hear witnesses in open court on the stand, or to receive depositions taken, with notice to the adverse party, under the order of the court or a judge at his chambers. Mode of proceeding.

§ 9. That no want of form shall delay or obstruct the proceedings. Notice of the petition, and of the time of hearing the same, shall be given to the opposite party in writing, by the party suing for divorce, at least sixty days before the hearing thereof, or such other notice as the court or judge at his chambers may direct, shall be given for such reasonable time as the court or judge may direct, and like notice of taking depositions shall be given in all cases. *Provided*, That if the parties shall both be residents of this territory, notice shall be given as aforesaid for at least thirty days before the application for such divorce, and in all cases in which an issue shall not be made up to be tried by a jury, the judge may hear, determine and decree upon the matters alleged in such petition at chambers. Notice how long to be given.

§ 10. If either party shall claim a trial by jury of the facts set forth in the petition, the court shall thereupon make up an issue and empanel a jury for the trial thereof, and render judgment upon the finding of such jury. *Provided*, That if the petition allege impotency as the cause of divorce, the courts shall hear and decide upon the same, without the intervention of a jury. Trial by jury, except, &c.

AN ACT concerning the lien of mechanics and others for the cost of repairs and improvements on real estate.

§ 1. Every person who shall by contract with the owner of any piece of land furnish labor or materials for erecting or repairing any building or the appurtenances of any building on such land, shall have a lien upon the whole piece of land in the manner hereinafter provided, for the amount due to him for such labor or materials. Lien allowed for labor and materials.

§ 2. Such lien shall not attach unless the contract is made in writing, and signed and acknowledged before some person authorized to take the acknowledgments of deeds by the owner of the land, or by some person duly authorized by him, and recorded in the registry of deeds for the county where the land lies. Contract must be in writing and recorded.

§ 3. The lien shall be dissolved at the expiration of six months after the time, when the money due by the contract or the last in- Limitation of lien.

stalment thereof shall become payable, unless a suit for enforcing the lien shall have been commenced within the said six months.

Land may be sold on petition.

§ 4. When any sum due by such contract shall remain unpaid for the space of sixty days after the same is payable, the creditor may upon a petition to the district court for the county where the land lies, obtain a decree for the sale thereof, and for applying the proceeds to the discharge of his demand.

Suit when deemed to be commenced.

§ 5. The petition may be filed in court or in the clerk's office in vacation, and in either case the filing of the petition shall be deemed the commencement of the suit.

Substance of petition.

§ 6. The petition shall contain a brief statement of the contract on which it is founded, and of the amount due thereon, with a description of the premises which are subject to the lien, and all other material facts and circumstances, and shall pray that the premises may be sold and the proceeds of the sale be applied to the discharge of the demand.

Notice to be given to owner and other creditors.

§ 7. The court in which the petition is entered shall order notice to be given to the owner of the land, that he may appear and answer thereto at a certain day in the same term, or at the next term of the court, by serving him with an attested copy of the petition with the order of the court thereon, fourteen days at least before the time assigned for the hearing; and the court shall also order notice of the filing of the petition to be given to all the other creditors who have a lien of the same kind upon the same estate, by serving them with the last mentioned order fourteen days at least before the time assigned for the hearing.

1b.

§ 8. If it shall appear to the court that any of the parties so entitled to notice are absent, or that they cannot probably be found to be served with the notice as before provided, the court may, instead of the personal notice before mentioned, or in addition thereto, order notice to all persons interested to be given by publishing in some newspaper the substance of the petition with the order of the court thereon, assigning the time and place for hearing the cause, or may order such other notice to be given as shall under the circumstances of the case be considered most proper and effectual.

1b.

§ 9. If at the time assigned for the hearing, it shall appear to the court that any of the persons interested have not had sufficient notice of the suit, the court may order further notice to them in such manner as shall be considered most proper and effectual.

Claims may be proved and contested.

§ 10. At the time assigned for the hearing of the cause, or within such further time as the court shall allow for that purpose, every creditor having a lien of the kind above mentioned upon the same estate, may appear and prove his claim, and the owner shall be admitted to deny and disprove the same, and also each of the said creditors shall have a right to contest the claim of every other creditor, and the court shall hear and determine the several claims in a summary manner, either with or without a jury, as the case may require.

Facts may be tried by a jury.

§ 11. Every material question of fact, arising in the case, shall be submitted to a jury if required by either party, or if it shall be thought proper by the court, and such trial shall be had upon a question stated, or an issue framed under the direction of the court, or otherwise as the court shall order.

§ 12. The court shall examine all the claims that shall be presented, and shall ascertain and determine the amount due to each creditor, who has a lien of the kind before mentioned, upon the estate in question; and every such claim that is due absolutely and without any condition, although not then payable, shall be allowed with a rebate of interest to the time when it would become payable.

Case of claims not yet payable.

§ 13. When the owner of the land shall have failed to perform his part of the contract, and by reason thereof, the other party shall, without his own default, have been prevented from completely performing his part, he shall be entitled to a reasonable compensation for as much thereof, as he has performed in proportion to the price stipulated for the whole, and the court shall adjust his claim accordingly.

Case of a part performance of contract.

§ 14. If the lien should be established in favor of any of the creditors whose claims are presented, whether the petitioning creditor or any other, the court shall order a sale to be made of the premises by any officer who is authorized to serve any civil process between the same parties.

Sale of premises when ordered.

§ 15. If any part of the premises can be separated from the residue, and sold without damage to the whole, and if the value thereof should be sufficient to satisfy all the debts proved in the case, the court may order a sale of that part, if it shall appear to be most for the interest of all the parties concerned.

Part may be sold if sufficient in certain cases.

§ 16. The officer who makes the sale shall give notice of the time and place appointed therefor, in the manner prescribed in relation to the sale of mortgaged lands, unless the court shall order other or different notice to be given.

Notice of sale.

§ 17. All lands sold under such order of the court, may be redeemed in like manner and upon the same terms as are provided in the case of a sale by advertisement of the right of redeeming mortgaged lands.

Right of redemption.

§ 18. If the claims against the estate are all ascertained at the time of ordering the sale, the court may at the same time order the officer to pay over and distribute the proceeds of the sale, after deducting all lawful charges and expenses, to and among the several creditors to the amount of their respective debts, if there is sufficient therefor, and if there is not sufficient, then to divide and distribute the same among the creditors in proportion to the amount due to each of them.

Distribution of proceeds, how made.

§ 19. If the claims are not all ascertained when the sale is ordered, ^{1b.} or if for any other reason the court should find it necessary or proper to postpone the order of distribution, they may direct the officer to bring the proceeds of the sale into court, there to be disposed of according to the decree of the court; and if by reason of the claims of attaching creditors, or for any other cause, the whole cannot be conveniently distributed at once, the court may make two or more successive orders of distribution as the circumstances may require.

§ 20. If there be any surplus of the proceeds of the sale after making all the payments before mentioned, it shall be forthwith paid over to the owner of the land; but such surplus, before it is so paid over, shall be liable to be attached or taken in execution, in like manner, as if it proceeded from a sale made by the officer on an execution.

Surplus, how disposed.

Case of a
prior attach-
ment of the
premises.

§ 21. If the land to which any such contract relates shall be under attachment at the time of recording the contract, the attaching creditor shall be preferred to the extent of the value of the land and buildings as they may be when the contract shall be recorded, and the court shall ascertain by a jury or otherwise as the case may require, what proportion of the proceeds of the sale shall be held subject to the attachment, as derived from the value of the premises when the contract was recorded.

1b.

§ 22. If the attaching creditor in such case shall recover judgment in his suit, he shall be entitled to receive on his execution the said proportion of the proceeds that are held subject to his attachment, or as much thereof as may be necessary to satisfy his execution, and the residue, if any, of the proceeds of the sale, shall be applied in the same manner as if there had been no such attachment.

Case of a
subsequent
attachment.

§ 23. If the land to which the contract relates shall be attached after the recording of the contract, the proceeds shall be applied after discharging all prior liens and claims, to satisfy the execution of such attaching creditor.

Case of an
intervening
attachment.

§ 24. If any attachment is made after the recording of such a contract, and if after the attachment another like contract should be recorded, the creditor in the latter contract shall be entitled to be paid only out of the residue of the proceeds, if any remaining after satisfying the attaching creditor, and also paying all that is due on the contracts that were recorded before the attachment.

Rights of re-
spective cre-
ditors, &c.
among them-
selves.

§ 25. When there are several attaching creditors, they shall, as between themselves, be entitled to be paid according to the order of their respective attachments; but when several creditors who are entitled to the lien provided for in this act, have all equal rights as between themselves, and the fund shall be insufficient to pay the whole, they shall share it equally in proportion to their respective debts.

Case of a
debtor hav-
ing estate
less than a
fee simple.

§ 26. If the person who procures the work to be done has an estate for life only, or any other estate less than a fee simple in the land on which the work is to be done, or if the land at the time of recording the contract is mortgaged or under any other incumbrance, the person who procures the work to be done shall nevertheless be considered as the owner for the purposes of this act, to the extent of his right and interest in the land, and the lien before provided for shall bind his whole estate and interest therein in like manner as a mortgage would have done, and the creditor may cause the right of redemption, or whatever other right or estate the owner had in the land, to be sold and applied to the discharge of his debt according to the provisions of this act.

Lien may
be enforced
against
heirs and
assigns.

§ 27. If the person indebted in any such contract shall die or convey away his estate before the commencement of a suit on the contract, the suit may be commenced and prosecuted against his heirs, or whoever shall hold the estate which he had in the premises at the time of making the contract; or if a suit is commenced in his life time, it may be prosecuted after his death against his heirs or assigns, in like manner as if the estate had been mortgaged to secure the debt.

And by exe-
cutors, &c.

§ 28. If the creditor in such contract shall die before the commencement of a suit thereon, the suit may be commenced and prosecuted by his executors or administrators, or if commenced in his life

time it may be prosecuted by them as it might have been by the deceased if living.

§ 29. If it appear in any stage of the proceedings under this act that the suit was commenced by the petitioning creditor before the expiration of sixty days, or after the expiration of six months, as before limited, or if the petitioning creditor should become nonsuit, or should from any cause fail to establish his claim, the suit may nevertheless be prosecuted by any other creditor having such a lien, in the same manner as if it had been originally commenced by the latter creditor, provided the circumstances of the case are such that he might then or at any time after the commencement of the original suit, have commenced a like suit on his own claim. Suits commenced by one may be prosecuted by another,

§ 30. If the suit is commenced by the petitioning creditor before the expiration of sixty days, as before limited, his claim may nevertheless be allowed, if he is otherwise entitled thereto, and if the suit is carried on by any other creditor, as provided in the preceding section; but he shall not in such case be entitled to any costs, and he may be required to pay the costs that shall be incurred by the debtor, or any part thereof, as the court shall think reasonable. Case of suits commenced prematurely &c.

§ 31. The costs in all other respects, shall be subject to the discretion of the court, and shall be paid out of the proceeds of the sale, or by any of the parties of the suit, as justice and equity may require. Costs, how paid.

§ 32. Nothing contained in this act shall be construed to prevent any creditor in such contract from maintaining an action thereon at the common law, in like manner as if he had no such lien for the security of his debt. This act not to bar action at law.

§ 33. The register of deeds shall receive and record all contracts of the kind mentioned in this act, that shall be delivered to him for that purpose, and he shall be entitled to the same fees therefor as for recording deeds or other papers of equal length. Register to record contracts.

§ 34. When any debt secured by such lien shall be fully paid, the creditor shall at the expense of the debtor, enter on the margin of the registry where the contract is recorded, a discharge of his said lien, or shall execute a deed of release thereof, in like manner as is provided in relation to the release of mortgages after the payment thereof; and if such creditor, having received satisfaction as aforesaid, shall not within six days after request made by the debtor, execute by himself or his attorney duly authorized, a deed of release, as aforesaid, he shall forfeit and pay to the aggrieved party any sum not exceeding one half the debt secured by such lien, to be recovered by such aggrieved party in an action of debt. Creditor, how to discharge lien.

AN ACT to restrain unauthorized banking, and for other purposes.

§ 1. No incorporated company, without being authorized by law, shall be in any manner concerned in receiving deposits, making discounts, or issuing notes or other evidences of debt, to be loaned or put into circulation as money; and any director or other agent or officer of any incorporated company, who shall violate any provision of this section, shall forfeit one thousand dollars. Incorporated company not to issue notes, &c. without authority. Penalty.

Issuing bills to circulate as money.

§ 2. No person or association of persons, or body corporate, except such bodies corporate as are expressly authorized by law, shall issue any bills or promissory notes or other evidences of debt, for the purpose of loaning them, or putting them in circulation as money, unless thereto especially authorized by law; and every person and every corporation, and every member of a corporation, who shall violate either of the provisions of this section, shall forfeit one thousand dollars.

Notes, &c. given for such bills, void.

§ 3. All notes and other securities for the payment of any money, or the delivery of any property, of which the consideration, or any part of the consideration, was any such bill, note, or other evidence of debt, mentioned in either of the preceding sections of this act, shall be void.

Bills, notes, &c. for less than one dollar prohibited.

§ 4. No person shall pay, give or receive in payment, or in any way circulate or attempt to circulate, any bank bill or promissory note, check, draft or other evidence of debt, which shall purport to be for the payment of a less sum than one dollar, or payable otherwise than in the lawful money of the United States; and any person who shall wilfully violate any of the provisions of this section, shall forfeit one hundred dollars.

Penalties, how recovered.

§ 5. The penalties prescribed in this act shall be recovered in suits in the name of the county commissioners of the county in which the offence is committed, to be prosecuted by the district attorneys of said counties respectively; and the same shall be paid into the county treasury.

Court to charge grand jury.

§ 6. It shall be the duty of the court to give this act in charge to the grand jury at each term of the district court.

AN ACT concerning corporations.

General powers of corporations

§ 1. All corporations shall, when no other provision is specially made, be capable, in their corporate name, to sue and be sued, appear, prosecute and defend, to final judgment and execution, in any courts or elsewhere; to elect in such manner as they shall deem proper, all necessary officers, and to make by-laws and regulations not inconsistent with the laws of the territory, or the United States, for their own government, and for the orderly conducting of their affairs and the management of their property. No charter for any corporation shall be construed as giving any other powers or privileges than such as are necessarily implied, or fully expressed, in such charter.

Time allowed corporations to close their concerns.

§ 2. All corporations whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued bodies corporate for the term of three years after such limitation or dissolution, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been, or may be established.

When corporations expire, &c. receivers to be appointed to settle affairs.

§ 3. When the charter of any corporation shall expire or be annulled, as provided in the preceding section, the district court of the county in which such corporation may be, on application of any creditor of such corporation, or of any stockholder or member thereof,

may appoint one or more persons to be receivers or trustees of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all such suits as may be necessary or proper, for the purposes aforesaid; and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such receivers may be continued beyond the said three years, and as long as the court shall think necessary for the purposes aforesaid.

§ 4. The said court shall have jurisdiction in chancery of such application, and of all questions arising in the proceedings thereon; and may make such orders, injunctions and decrees therein, as justice and equity may require. Equity jurisdiction given to district court.

§ 5. The said receivers shall pay all debts due from the corporation, if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same ratably among all the creditors, who shall prove their debts in the manner that shall be directed by any order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of said debts, the receivers shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders or members of the corporation, or their legal representatives. Receivers to pay debts &c and distribute surplus

§ 6. The franchise of any turnpike or other corporation authorized to receive toll, and all the rights and privileges thereof, shall be liable to attachment on *mesne* process; and when such attachment or other service of *mesne* process, shall be made on any such corporation, the officer serving the same shall leave an attested copy of the process, and his return thereon, with the clerk, treasurer, or some one of the directors of the corporation, fourteen days at least before the day of the sitting of the court to which the same may be returnable. Franchise, &c. how attached.

§ 7. When any judgment shall be recovered against any turnpike or other corporation authorized to receive toll, the franchise of such corporation, with all the rights and privileges thereof, so far as relates to the receiving of toll, and also all other corporate property, real and personal, may be taken on execution and sold at public auction. May be sold on execution

§ 8. The officer having such execution against any corporation mentioned in the preceding section, shall, thirty days at least before the day of sale of any franchise or other corporate personal property, give notice of the time and place of sale, by posting up a notification thereof at the county seat of the county in which such corporation may be; and also by causing an advertisement of the sale, expressing the name of the creditor, the amount of the execution, and the time and place of sale, to be inserted three weeks successively, in some newspaper published in the county; and if no newspaper shall be published in the county, then notice shall be given in some newspaper published in the territory. Mode of selling franchises, &c.

§ 9. The officer who may levy any execution as prescribed in the preceding section, may adjourn the sale for any time not exceeding seven days, until the sale shall be completed. Sale may be adjourned.

§ 10. In the sale of the franchise of any corporation, the person who shall satisfy the execution, with all legal fees and expenses Who considered highest bidder.

thereon, or who shall agree to take such franchise for the shortest period of time, and to receive during that time all such toll as the said corporation would by law be entitled to demand, shall be considered as the highest bidder.

Officer's return to transfer right of toll, &c.

§ 11. The officer's return on such execution shall transfer to the purchaser all the privileges and immunities which by law belonged to said corporation, so far as relates to the right of demanding toll; and the officer shall immediately after such sale deliver to the purchaser possession of all the toll houses and gates belonging to such corporation, in whatever county the same may be situated; and the purchaser may thereupon demand and receive, to his own use, all the toll which may (be) accrue, within the time limited by the tenor of his purchase, in the same manner, and under the same regulations as such corporation was before authorized to demand and receive the same.

Purchaser of franchise to have same remedy as corporation.

§ 12. Any person who may at any time, under the provisions of this act, purchase the franchise of any turnpike or other corporation, and the assignee of such person, may recover in an action on the case, any penalties imposed by law for a [an] injury to the franchise, or for any other cause, and which such corporation would have been entitled to recover, during the time limited in the said purchase of the franchise; and during that time the corporation shall not be entitled to prosecute for such penalties.

Liabilities of corporation to continue.

§ 13. The corporation whose franchise shall have been sold as aforesaid, shall, in all other respects, retain the same powers and be bound to the discharge of the same duties, and liable to the same penalties and forfeitures as before such sale.

Corporation may redeem franchise sold.

§ 14. Such corporation may at any time within one year from the time of such sale, redeem the franchise by paying or tendering to the purchaser thereof the sum that he shall have paid therefor, with twelve per cent interest thereon, but without any allowance for the toll which he may have received; and upon such payment or tender, the said franchise and all the rights and privileges thereof, shall revert and belong to said corporation, as if no such sale had been made.

Acts of incorporation subject to alteration and repeal.

§ 15. Every act of incorporation which shall be hereafter passed, shall at all times be subject to amendment, alteration, or repeal, at the pleasure of the legislature: *Provided*, That no act of incorporation shall be repealed, unless for some violation of its charter or other default, when such charter shall contain an express provision limiting the duration of the same.

AN ACT to prevent forcible entries and detainers.

Forcible entry forbidden.

§ 1. No person or persons shall hereafter make any entry into lands, tenements, or other possessions, but in cases where entry is given by law, and in such cases not with strong hand nor with multitude of people, but only in a peaceable manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine.

Restitution to be made to person ousted or unlawfully held out.

§ 2. Any justice of the peace shall have authority to inquire by a jury as hereinafter directed, as well against those who make unlawful and forcible entry into lands, tenements, or other possessions, and with strong hand detain the same, as against those who having law-

fel and peaceful entry into lands, tenements, and other possessions, unlawfully detain the same; and if it be found upon such inquiry, that an unlawful and forcible entry hath been made, and that the same lands, tenements, and other possessions are held and detained by force and strong hand, or that the same after a lawful entry, are held unlawfully, then such justice shall cause the party complaining to have restitution thereof.

§ 3. When any complaint shall be formally made in writing to any justice of the peace of any such unlawful and forcible entry or unlawful detainer, he shall issue a summons, directed to the sheriff or any constable of the same county, commanding him to summon the person or persons against whom such complaint shall be made, to appear before the said justice on a day in such summons named, which shall not be less than six nor more than ten days from the day of issuing the said summons, and at the place therein mentioned; and he shall also issue a precept to the sheriff or any of the said constables, commanding him to cause to come before him, twelve discreet men of lawful age, and who shall be qualified to serve as jurors on trial in the district courts of the county, at the same time and place appointed for the trial or hearing of the complaint; and if a sufficient number of persons summoned do not attend, the said justice may order the sheriff or constable to complete the number by returning others forthwith; and the jury empannelled shall be sworn well and truly to try the forcible entry and detainer, or unlawful detainer complained of, and to return a true verdict thereof; and if the jury, after a full hearing, find the person against whom the complaint is made, guilty of the forcible entry and detainer, or the unlawful detainer complained of, they shall all sign their verdict, and deliver the same to the said justice, who shall thereupon enter judgment for the complainant to have restitution of the premises, and shall impose such fine, not exceeding ten dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may commit the person against whom judgment is so entered, until the fine and costs be paid; and the said justice shall also award a writ of restitution; but if the jury find that the person complained of is not guilty, the complaint in their opinion not being supported, the said justice shall tax the costs against the complainant, and issue execution accordingly.

§ 4. If the sheriff or constable cannot find the party against whom the summons issued, he may, six days before the time appointed for returning the same, leave a true and attested copy of said summons at the usual place and abode of such person, and he shall make a return of such facts, and that he has left a copy as aforesaid, and when the same was done; and if the party do not appear at the time appointed for hearing the said complaint, the said justice may, in his discretion, adjourn or proceed *ex-parte*, except that in this case he shall not inflict any fine upon him; and in all such cases he may issue a writ of restitution, and order the costs taxed to be levied of the property of the person found guilty; but in every case where the jury do not find for the complainant, and the party complained against shall not have appeared at the empannelling of the jury, there shall be no costs taxed for the party so failing to attend. The

justice may at his discretion adjourn any trial under this act not exceeding six days.

If jury cannot agree, to be discharged § 5. And if the jury summoned and empannelled, as aforesaid, cannot agree upon a verdict, the justice before whom the trial is pending, may discharge the same, if in his opinion they are not likely to agree upon a verdict, and issue a summons returnable forthwith for the purpose of empannelling a new jury.

Treble damages to be recovered.

Limitation.

Action against lessee holding over, not paying rent, &c.

§ 6. The complainant of any forcible entry or detainer aforesaid, who shall recover against the person complained of as aforesaid, shall also be entitled to recover treble damages, with costs of suit, by an action of trespass against the offender or offenders, to be brought before any justice of the peace, or a court of record for that purpose: *Provided always*, That nothing in the foregoing part of this act shall be construed to extend to any person or persons who have had the quiet, peaceable, and uninterrupted occupation of any lands, tenements, or other possessions, otherwise than by demise or lease, for the period of three whole years next before the entering of such complaint, any thing in this act to the contrary notwithstanding.

§ 7. When any person shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised or let, to him or her, or to the person under whom he or she holds possession; or contrary to the conditions or covenants of the lease or agreement under which he or she holds; or after any rents shall have become due according to the terms of such lease or agreement, and shall remain unpaid, for the space of twenty days; in all such cases, if the lessor, his heirs, executors, administrators, assigns, agent or attorney, shall make demand in writing of such tenant, that he or she deliver possessions of the premises held as aforesaid; and if such tenant shall neglect or refuse, for the space of twenty days after such demand, to quit the possession of such lands or tenements, or to pay the rent therefor, so due and unpaid as aforesaid; upon complaint thereof to any justice of the peace, of the proper county, the justice shall proceed to hear, try and determine the same, in the same manner as in cases of forcible entry and detainer, and issue a writ of restitution accordingly: *Provided*, That in such cases, the justice shall have no power to impose a fine upon such tenant.

Limitation

Treble damages, when given.

Penalty for not appearing, &c. as juror or witness

§ 8. The preceding section shall not extend to any person who has or shall have continued in possession three years after the termination of the time for which the premises were demised, or let to him or her, or those under whom he or she claims, or to any person who continues in possession three years quietly and peaceably by disseisin, anything therein contained to the contrary notwithstanding.

§ 9. The complainant shall be entitled to an action of trespass against the person complained of, and who shall be found guilty on the trial; and may recover treble damages from the time of notice given to quit the premises, and until that time damages only.

§ 10. Every person summoned as a juror, or subpoenaed as a witness, who shall not appear, or appearing shall refuse to serve or give evidence in any prosecution instituted by virtue of this act, shall forfeit and pay for every such default or refusal, unless some reasonable cause be assigned, such fine, not exceeding ten dollars, in case of a juror or witness, as the said justice shall think proper to impose; and

such justice is hereby authorized and required to issue an execution, directed to the sheriff or any constable of said county, to levy the same of the goods and chattels of the offender; which fine, when recovered, shall be paid by the said justice to the treasurer of the said county.

§ 11. If either party shall feel aggrieved by the verdict of the jury, or decision of the justice, or by the judgment of the justice rendered upon such verdict, he may within sixty days after judgment shall be rendered, remove the said proceeding and judgment before the district [court] of the county wherein the said trial shall be had, by a writ of certiorari. Proceedings how removed to district court.

§ 12. The party intending to remove the proceedings or judgment under the last preceding section, shall himself, his agent or attorney, make or cause to be made an affidavit setting forth the whole proceedings and testimony had before the said justice on the trial, and stating fully the errors on which the application for a writ of certiorari is founded, and shall within sixty days after the rendition of the judgment present the same to the judge of the said district court, or to a supreme court commissioner, who shall, if any error has intervened, allow a writ of certiorari to be issued.

§ 13. The party procuring such writ of certiorari shall enter into bonds with one or more sufficient sureties, in such sum as the officer allowing the writ of certiorari shall direct, conditioned to pay all costs upon such forcible entry and detainer, and all such costs as shall be adjudged against him on the said certiorari, which bond shall be approved by the officer allowing the certiorari, and served with the writ upon the justice. Party removing proceedings to give bond.

§ 14. The party procuring such writ of certiorari shall, within twenty days thereafter, serve the same upon the justice, which shall stay all further proceedings before said justice, who shall thereupon within ten days make and file his return to the said writ with the clerk of the district court, together with the bond, in which return the said justice shall set out a complete statement of all the proceedings had before him, and all his decisions during the said trial, and all exceptions and objections made by either party. Certiorari, when served on justice. To file return to writ.

§ 15. If a writ of restitution shall have been issued by the justice previous to the service of any writ of certiorari, the same shall not thereby be superseded unless the party procuring such writ shall also in like manner give security that he will pay all damage or injury which shall be done to the land in controversy by the party procuring such writ, or that the land shall be in the same condition on the final determination of such suit on the writ of certiorari as the same shall be at the time of the service of such writ, in which case the justice shall give to the party procuring such certiorari a certificate of the service thereof, the service of which upon the opposite party, or upon the officer executing the writ of restitution, shall stay all proceedings on such writ of restitution, and shall prevent the party in whose favor a writ of restitution may have been granted, and all persons claiming under him, from further holding or interfering with the land in controversy until the decision of the district court on the said certiorari. Writ of restitution when to be suspended.

§ 16. The district court to which any writ of certiorari shall be returned, shall proceed to hear and determine the same as the very Proceedings on certiorari in district court.

right of the case shall appear, without regarding technicalities or imperfections in the said return, and shall give judgment, and award execution accordingly.

Justice compelled to amend return.

§ 17. The district court shall have power to compel the justice, by attachment, to make or amend any return which shall be withheld, or insufficiently or improperly made.

Forms to be used.

§ 18. The following, or equivalent forms, shall be used in proceedings under this act, to wit:

SUMMONS.

Summons. A Territory of Wisconsin, county of ss. To the sheriff or any constable of the county aforesaid: Whereas of hath exhibited unto a justice of the peace, in and for the county aforesaid, a complaint against of for that the said on the day of at with force and arms, and with a strong hand (here insert the substance of the complaint with legal certainty.) Therefore in the name of the United States of America, you are hereby commanded to summon the said if to be found in the said county, to appear before me at on day of at of the o'clock in the noon, then and there to make answer to and defend against the complaint aforesaid, and further to be dealt with according to law: but if the said is not to be found within the said county, you are required to leave a true and attested copy of this summons at the usual place of abode of the said six days at least before the said return day hereof, and make due return to me of this summons, with your doings therein.

Dated at this day of in the year one thousand eight hundred and

Justice.

WRIT OF RESTITUTION.

Writ of restitution.

Territory of Wisconsin, county of ss. To the sheriff or any constable of the county aforesaid: Whereas of at a court of inquiry of a forcible entry and detainer, held at in the county aforesaid, on the day of one thousand eight hundred and before a justice of the peace in and for the county aforesaid, by the consideration of the court, recovered judgment against of to have restitution of (here describe the premises as in the complaint.) Therefore, in the name of the United States of America, you are hereby commanded, that taking with you the force of the county if necessary, you cause the said to be immediately removed from the aforesaid premises, and the said to have peaceable restitution of the same; you are also hereby commanded that of the goods and chattels of the said within the said county, you cause to be levied, and the same being disposed of according to law, to be paid to the said the sum of being the costs taxed against the said for the said at the court aforesaid, together with twenty-five cents for this writ, and thereof, together with this writ, make due return within thirty days from the date hereof, according to law. Dated at the day of one thousand eight hundred and

Justice.

VERDICT.

At a court of inquiry held at on the day of one ^{Verdict.}
 thousand eight hundred and before a justice of the peace
 in and for the county of of complainant, against e-r
 spondent; the jury find that the facts alleged in the said complaint
 are true, that the said is guilty thereof, and the said ought to
 have restitution of the premises therein described, without delay (or
 in case the jury do not find the allegations of complaint proved, then)
 the jury find that the facts alleged in the said complaint are not prov-
 ed, and that the said is not guilty thereof.

Foreman.

Justice.

AN ACT relative to limited partnerships.

§ 1. Limited partnerships for the transaction of any agricultural, mercantile, mechanical, mining, smelting or manufacturing business, <sup>Limited part-
nerships, for
what pur-
poses allow-
ed</sup> within this territory, and for no other purpose whatever, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and abilities [liabilities] herein prescribed.

§ 2. Such partnership shall consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible, as general partners now are by law, and of one or more persons, who shall contribute in actual cash payments, a specified sum as capital to the common stock, who shall be called special partners, and who shall not be liable for debts of the partnership, beyond the fund so contributed by him or them to the capital. <sup>Liability of
general and
special part-
ners.</sup>

§ 3. The general partners only, shall be authorized to transact business and sign for the partnership, and to bind the same. <sup>Business by
whom con-
ducted.</sup>

§ 4. The persons desirous of forming such partnership, shall make and severally sign a certificate, which shall contain, *First*, the name or firm under which such partnership is to be conducted. <sup>Limited
partnership
how formed.</sup> *Second*, the general nature of the business intended to be transacted. *Third*, the names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence. *Fourth*, the amount of capital which each special partner shall have contributed to the common stock. *Fifth*, the period at which the partnership is to commence, and the period that it will terminate.

§ 5. The certificate shall be acknowledged by the several persons ^{ib.} signing the same, in the manner, and before the same persons that deeds are now acknowledged; and the said acknowledgment shall be certified in the same manner as the acknowledgment of deeds is now certified.

§ 6. The certificate so acknowledged and certified, shall be re- ^{ib.} corded and filed in the office of the register of deeds of the proper county in which the principal place of business of the partnership shall be situated; and shall also be recorded by him at large, in a book to be kept for that purpose, open to inspection. If the partnership shall have places of business situated in different counties, a transcript of the certificate, and of the acknowledgment thereof, duly certified by the register in whose office it shall be filed, and under

his official seal, shall be filed and recorded in like manner, in the office of the register of every such county.

Limited
partnership
how formed.

§ 7. At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating the sums specified in the certificate to have been contributed by each of the special partners, to the common stock, and to have been actually and in good faith paid in cash.

1b.

§ 8. No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed. And if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

Partners to
publish
terms of
partnership,
&c.

§ 9. The partners shall publish the terms of the partnership, when registered, for at least six weeks immediately after such registry, in a newspaper published in the county where the principal business of the partnership shall be carried on, if there be one published in that county; if not, then in a newspaper in the territory nearest to the said place of business, to be designated by the register of deeds of the county in which said registry shall be made; and if such publication be not made, the partnership shall be deemed general.

Proof of
publication
how made.

§ 10. Affidavits of the publication of such notice, by the printers of the newspaper in which the same shall be published, may be filed with the register of deeds in the county where the principal business of the partnership may be carried on, and shall be evidence of the facts therein contained.

Proceedings
on renewal
of partner-
ship.

§ 11. Every renewal or continuation of such partnership, beyond the time originally fixed for its duration, shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued, shall be deemed a general partnership.

Alterations,
&c. to be
dissolution
of partner-
ship.

§ 12. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership, which shall in any manner be carried on after any such alteration shall have been made, shall be a general partnership, unless renewed as a special partnership, according to the provisions of the last section.

In whose
name busi-
ness to be
conducted.

§ 13. The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner shall be used in such firm, with his privity, he shall be deemed a general partner.

Suits relat-
ing to part-
nership, how
brought.

§ 14. Suits in relation to the business of the partnership, may be brought and conducted by and against the general partners in the same manner as if there were no special partners.

Capital stock
not to be
withdrawn.

§ 15. No part of the sum which any special partner shall have contributed to the capital stock, shall be liable for any debts previously contracted by the general partners, nor shall any part of such

sum be withdrawn by him, or paid or transferred to him, in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership. But any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits.

§ 16. If it shall appear that by the payment of interest or profits to any special partner, the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital with interest. Capital when reduced, to be made good.

§ 17. A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management; but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise. If he shall interfere contrary to these provisions, he shall be deemed a general partner. Special partner not to do business for partnership.

§ 18. The general partners shall be liable to account to each other, and to the special partners, for the management of their concerns, both in law and equity, as other partners now are by law. General partners to account, &c.

§ 19. Every partner who shall be guilty of any fraud in the affairs of the partnership, shall be liable civilly, to the party injured, to the extent of his damages. Fraud in partners.

§ 20. Every sale, assignment or transfer of any of the property or effects of such partnership, when insolvent, or in contemplation of [the] insolvency of any partner, with the intent of giving a preference to any creditor of such partnership, or insolvent partner over other creditors of such partnership, and every judgment confessed, lien enacted or security given, by any such partner under the like circumstances, and with the like intent, shall be void as against the creditors of the partnership. Fraudulent assignments, &c. of partnership property.

§ 21. Every such sale, assignment or transfer of any of the property or effects of the general or special partners, made by such general or special partner when insolvent, or in contemplation of insolvency of the partnership, with the intent of giving, to any creditor of his own, or of the partnership, a preference over the creditors of the partnership; and every judgment, confessed, lien enacted, or security given by any such partner, under the like circumstances, shall be void as against the creditors of the partnership. Id. of the property of the partners.

§ 22. Every special partner who shall violate any provision of the two last preceding sections, or who shall concur in, or assent to, any such violation by the partnership, or by any individual partner, shall be liable as a general partner. Liability of special partner.

§ 23. In case of the insolvency, or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor, until the claims of all the other creditors of the partnership shall be satisfied. Claim of special partner as creditor.

§ 24. No dissolution of such partnership, by the acts of the parties, shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the register's office, in which the original certificate was recorded, and published, once in Notice of dissolution to be given.

each week for four weeks, in a newspaper published as is provided for in the ninth section of this act.

AN ACT relating to interest.

Rate of interest allowed by agreement.

When no agreement.

Penalty for taking greater interest than allowed.

Act to take effect.

§ 1. That any rate of interest which persons may agree upon, not exceeding twelve per centum per annum, shall be legal and valid: *Provided*, That upon all bills of exchange, promissory notes, contracts, debts or demands, wherein the rate of interest is not otherwise specified, it shall be computed at seven dollars, for the giving day of payment on the sum of one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time: *Provided further*, That no bank or corporation, except where it is otherwise provided by their charter, shall recover or take, directly or indirectly, more than seven per centum interest for any sum or sums of money loaned.

§ 2. If any person or corporation shall take, accept or receive, for giving day of payment upon any bill of exchange, promissory note, contract, debt or demand, a greater rate of interest than is herein before limited, such person or corporation shall forfeit three times the amount of the excess, to be recovered with costs of suit, in the name of the person or persons so paying any excess of interest, in an action of assumpsit, before any court having competent jurisdiction: *Provided*, That the suit is commenced within one year from the day of payment of such excess of interest.

§ 3. This act shall take effect from and after its passage.

AN ACT concerning seals.

Great seal of territory.

Seal of supreme and district courts.

Treasurer to furnish seals.

Temporary seal may be used.

Device in lieu of seal.

§ 1. The description, in writing, of the great seal of the territory, deposited and recorded in the office of the secretary of the territory, shall remain a public record, and shall be and continue the description of the great seal of said territory; and the person administering the government of the territory shall have the custody of the said seal, and all such matters and things as issue under the said seal shall be entered of record in the office of the secretary of the territory.

§ 2. The seal of the supreme court, and of the district courts, deposited and recorded as aforesaid, shall be and continue the description of the said seals, respectively.

§ 3. It shall be, and hereby is made the duty of the treasurer of the territory to furnish seals for such of the several district and probate courts as are now unprovided with the same, with such descriptions and devices as the said court shall respectively require, which shall be deposited and recorded as aforesaid, and paid for out of the territorial treasury.

§ 4. When any district or probate court shall be unprovided with a seal, the judge of said court may authorize the use of any temporary seal, or of any device by way of seal.

§ 5. That any instrument, to which the person making the same shall affix any device by way of seal, shall be adjudged and held to be of the same force and obligation as if it were actually sealed.

A RESOLUTION relative to seals.

That the great seal of the territory, the seal of the supreme court, and the seals of the several district courts, and for the boards of county commissioners for the several counties, which have been procured by the secretary of the territory, be adopted and received, and be distributed to the several offices [officers] to whose office they respectively belong.

Seals to be sent to officers.

[A resolution relative to maps.]

It shall be the duty of the secretary of the territory to make the following distribution of the maps of the territory, which have been executed in accordance with a joint resolution of the legislative assembly, approved December 3d, 1837, to wit: one to the governor of the territory; one to the secretary of the territory; one to each branch of the legislative assembly; one to each member of the present legislature; one to the auditor, and one to the treasurer of the territory, for the use of their offices; one for the use of the supreme court room; one to each of the judges of the district court; one to each of the organized counties of this territory, to be preserved in the office of the register of deeds; one to the library of congress; and one to the territorial library.

Maps of the territory, how distributed.

AN ACT relative to the sessions of the legislative assembly.

§ 1. The regular sessions of the legislative assembly shall commence on the first Monday of December in each and every year.

§ 2. The governor of the territory may, as often as in his opinion the public interest requires it, appoint by proclamation, special sessions to be holden at such time as he may designate, not less than thirty days from the issuing any such proclamation; and any such special session shall not exceed twenty days, unless the proclamation for calling such session shall have been published at least ninety days previous to the time fixed for the commencement thereof.

Regular sessions, when to commence. Governor may call special sessions.

§ 3. No member of the legislative assembly shall be liable to arrest on a service of any civil process, issued by any of the courts of this territory during any session of the legislative assembly, or for ten days previous to the commencement, or subsequent to the termination of any such session; and any member in arrest during the period of such exemption, shall be entitled to an immediate discharge on application to any judge, supreme court commissioner, or justice in any county in which such arrest may have been made.

Members of assembly not liable to arrest on civil process.

§ 4. This act shall take effect from and after its passage.

Act to take effect.

AN ACT to legalize the acts of certain officers.

§ 1. That the official acts heretofore done and performed by the civil officers heretofore appointed in this territory, shall not be considered invalid on account of the neglect of said officers to take the oath required of them by the law of congress, establishing the territory of Wisconsin; nor because the oath of office taken has not been regularly certified and recorded in the office of the secretary of the territory.

Acts of certain officers not illegal for neglect to take oath, &c.

§ 2. This act to take effect from its passage.

Act to take effect.

RESOLUTIONS to authorize the location of a portion of the university lands.

Commissioners appointed.
Quantity of land to be located.

How selected.

Notice to be given, and report to be made.

Compensation of commissioners.

That John V. Suydam of the county of Brown, Francis C. Kirkpatrick of the county of Iowa, and Jeremiah B. Zander of the county of Milwaukee, be and hereby are appointed commissioners to locate a portion, not exceeding two-thirds, of all the lands donated by an act of congress, approved June 12, 1838, for the rise and support of a university within this territory. Said commissioners, or a majority of them, shall meet at Madison, in the county of Dane, on or before the first day of May next, and proceed to examine and select equal quantities of such lands within the limits of the United States' land districts in this territory, as will best promote the interests of the university: *Provided*, That no improved lands, or lands claimed, agreeably to the rules of the country, by actual settlers, or residents of the territory, shall be taken or selected, for the purposes aforesaid.

Within thirty days after making the selections in any one of the land districts aforesaid, the commissioners shall give public notice thereof, in some newspaper published in such land district, for six successive weeks, and on completing the selection, make a report to the governor of this territory; to be by him transmitted to the secretary of the treasury of the United States, with a request that the several tracts of land therein mentioned, may be set apart, and reserved for the purposes mentioned in said act of Congress.

Resolved further, That the said commissioners shall each be allowed the sum of four and a half dollars per day for their services, during the time which they may be actually engaged in the duties hereby imposed.

AN ACT to provide for the destruction of wolves.

County commissioners (except in Brown, &c.) may allow bounty for wolves.

Persons applying to go before justice.

To make oath where wolf was taken.

§ 1. That the several boards of county commissioners or supervisors, (as the case may be,) of the several counties in this territory, except the county of Brown, and the counties thereto attached for judicial purposes, may at any regular or special meeting of said boards, make such provision, and allow such bounties for the destruction of wolves in their respective counties as they may deem necessary, not exceeding three dollars for each wolf or wolf's whelp, to be allowed in the manner hereinafter provided.

§ 2. Every person intending to apply for such bounty shall take every wolf or wolf's whelp, killed by him, or the scalp thereof, with the ears entire thereon, to one of the justices of the peace of the county in which such wolf or whelp shall have been taken, who shall thereupon decide upon such application.

§ 3. The person claiming such bounty, shall then and there be sworn by such justice, and state on oath the time [when] and place, [where] (as near as he can,) every wolf or wolf's whelp, for which a bounty is claimed by him, was taken and killed; he shall also submit to such other examination, on oath, concerning the taking and killing such wolf or whelp, as the justice may require; and the statements made by him, on such examination, shall be reduced to writing in the form of an affidavit, which shall be sworn to and subscribed by the person making it, and certified by the said justice; and

any person swearing falsely in the premises shall be subject to all the pains and penalties of perjury.

False swearing declared perjury.

§ 4. If it shall appear to the justice upon such examination, that the wolf or whelp was taken and killed within the county for which he is a justice, by the person applying for the bounty, and that the mother of such whelp was not taken before she brought forth the same, he shall cut off and burn the ears and scalp of such wolf or whelp and deliver to the person applying, a certificate of all the facts touching the examination, annexing thereto the original affidavit, made and subscribed by such person; and every justice who shall issue any such certificates, shall regularly number all the certificates issued by him, during each year, and shall mark such number and year on each certificate.

Justice to issue certificate of facts, &c.

§ 5. The certificate, with the affidavit so taken, shall within one month after the date thereof, be delivered to the clerk of the board of county commissioners of the county wherein the same was made, and he shall lay the same before the board of county commissioners of which he is clerk, at their next meeting. If the board shall be satisfied that such certificate and affidavit are just and correct, they shall award to the person to whom such certificate shall have been given, the bounty above specified, and shall cause the certificate and affidavit to be filed with the clerk; and the person to whom such bounty shall be awarded, shall be entitled to receive the same from the treasurer of said county.

Certificate delivered to clerk of co. com.

To be filed with clerk.

Treasurer to pay bounty.

AN ACT to provide for recording town plots.

§ 1. That when any county commissioners or other person or persons wish to lay out a town in this territory, or an addition or subdivision of out lots, said commissioners or other person or persons shall cause the same to be surveyed, and a plot thereof made, which plot or map shall particularly describe and set forth all the streets, alleys, commons or public grounds, and all in and out lots or fractional lots within, adjoining or adjacent to said town; giving the names, widths, courses, boundaries and extent of all such streets and alleys.

Towns to be surveyed and plot made.

§ 2. All the in lots intended for sale shall be numbered in progressive numbers, or by the squares in which they are situated, and their precise length and width shall be stated on said plot or map; and out lots shall not exceed ten acres in size; and shall in like manner be surveyed and numbered, and their precise length and width stated on the plot or map, together with any street, alleys or roads which shall divide or border on the same.

Lots, how numbered.

§ 3. The county commissioners, proprietor or proprietors of the town, addition or subdivision of out lots, by themselves or agents, shall at the time of surveying and laying the same, plant and fix at a corner of the public ground, or at the corner of a public lot, if any there be, and if there be none, then at the corner of some one of the in lots in the town, and at the corner of each out lot, a good and sufficient stone of such size and dimensions, and in such manner as the surveyor shall direct, for a corner from which to make future surveys, and the point or points where the same may be found, shall be designated on the plot or map.

Stones to be placed at corners of lots, &c.

Plot, &c. to be acknowledged.

§ 4. The plot or map after having been completed shall be certified by the surveyor, and the county commissioners, and every person or persons whose duty it may be to comply with the forgoing requisition, shall, at or before the time of offering such plot or map for record, acknowledge the same before any person authorized to take the acknowledgment of deeds. A certificate of such acknowledgment, shall, by the officer taking the same, be endorsed on the plot or map, which certificate of the survey and acknowledgment shall also be recorded, and form a part of the record.

Title to land marked on plot, &c. as donation to the public, &c. vested in public.

§ 5. When the plot or map shall have been made out and certified, acknowledged and recorded as required by this act, every donation or grant to the public, or any individual or individuals, religious society or societies, or to any corporation or bodies politic, marked or noted as such on said plot or map, shall be deemed in law and in equity, a sufficient conveyance to vest the fee simple of all such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes, a general warranty against such donor or donors, their heirs and representatives, to the said donees or donees, grantees or grantees, for his, her or their use, for the uses and purposes therein named, expressed and intended, and no other use or purpose whatever; and the land intended to be for the streets, alleys, ways, commons, or other public uses in any town or city, or addition thereto, shall be held in the corporate name thereof, in trust to, and for the uses and purposes set forth and express [expressed] or intended.

Plot, where to be recorded.

§ 6. If the county in which said town or addition is situated, shall not be organized, then and in that case the plot or map shall be recorded in the recorder's office of that county to which the county in which said town is situated, shall at the time be attached for judicial purposes.

Plots heretofore laid out, to be recorded.

§ 7. When any town, addition or subdivision of out lots has been heretofore laid out, and lots sold in this territory, either by county agents, commissioners or other persons, and a plot or map of the same has not been acknowledged and recorded in conformity to the acts heretofore in force in this territory, it shall be the duty, and it is hereby required of the present county commissioners, or a majority of them in such county, or other person or persons, proprietor or proprietors, who have laid out the same, or his, her or their legal representatives to have the same fairly, fully and clearly made out, certified and acknowledged and recorded in the proper county, in the form and manner required by this act; noticing, and particularly describing the donation of land, or otherwise, to individual societies, bodies politic, or for common or public uses: *Provided*, That if the lots shall have been differently numbered, and sales made, and they cannot well be changed, they shall be returned, as originally stated; but in all other respects, the plot or map shall conform to the requisitions of this act.

Fees of surveyor.

§ 8. The surveyor who shall lay out, survey and plot any town, or addition, shall be entitled to receive twenty-five cents for each and every in and out lot the same may contain, and the recorder of the county recording the same, shall receive the sum of one cent for each and every lot as aforesaid; the said plot and survey to be by him transcribed or copied into a book to be provided for that purpose.

§ 9. If any person or persons shall dispose of, offer for sale or lease for any time; any out or in lots in any town, or addition to any town or city, or any part thereof, which shall hereafter be laid out, until all the foregoing requisitions of this act shall have been complied with, every person so offending shall forfeit and pay the sum of twenty-five dollars for each and every lot, or part of a lot, sold or disposed of, leased or offered for sale. Penalty for offering to sell lots, &c. before complying with act.

§ 10. If any county commissioner or commissioners, or other person or persons, whose duty it is to comply with any of the requisitions of this act, shall neglect or refuse so to do, he or they shall forfeit and pay a sum of not less than ten, nor more than one hundred dollars, for each and every month he or they shall delay a compliance. Penalty for not complying with act.

§ 11. All forfeitures and liabilities which may be incurred and arise under this act, shall be prosecuted for and recovered in the name of the county treasurer; and any officer or officers paying over any money to the said treasurer, received under any of the provisions of this act, shall take his receipt therefor, and forthwith file the said receipt with the clerk of the board of commissioners; and the said clerk shall charge the amount of said receipt in account against said treasurer, on the books of the county commissioners. Penalties how recovered, &c.

§ 12. The district courts are hereby authorized and empowered, on application made by the proprietor or proprietors of any town within their proper county, to alter or vacate the same, or any part thereof. Town may be vacated.

§ 13. If any proprietor or proprietors of a town shall be desirous of altering or vacating the same, or any part thereof, such proprietor or proprietors shall give notice in writing of such intended application, in at least two of the most public places in the county, wherein such town may be situated, and insert a copy thereof in a newspaper printed or in circulation in said county, at least sixty days prior to the sitting of the court to which he or they intend to make such application. Proceedings to vacate town.

§ 14. If such applicant or applicants shall produce to said court satisfactory evidence that the notice required by the preceding section of this act has been given, and that all persons owning any lot or part thereof in said town, have agreed that the whole, or part thereof, shall be altered or vacated, the court shall proceed to alter or vacate said town, or any part thereof, and order their proceedings therein to be recorded by their clerk with the records of said court. *Provided*, That the vacating of any town plot, or any part of a town plot, shall not vacate any part of a territorial or county road.

AN ACT to prevent fraudulent conveyances and contracts, relative to real and personal property.

TITLE I.

OF FRAUDULENT CONVEYANCES AND CONTRACTS, RELATIVE TO LANDS.

§ 1. That every conveyance of any estate or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to de- Fraudulent conveyances void.

fraud prior or subsequent purchasers for a valuable consideration, of the same lands, rents or profits, as against such purchasers, shall be void.

What not deemed a fraudulent conveyance.

§ 2. No such conveyance or charge shall be deemed fraudulent, in favor of a subsequent purchaser, who shall have actual or legal notice thereof, at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefitted by such charge, was priory [privy] to the fraud intended.

Conveyance, &c. containing power of revocation, void.

§ 3. Every conveyance or charge of, or upon, any estate or interest in lands, containing any provision for the revocation, determination, or alteration, of such estate or interest, or any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers from such grantor for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered, by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

Conveyance executed by person to whom revocation given, valid.

§ 4. Where a power to revoke a conveyance of any lands, or the rents and profits thereof, and to reconvey the same, shall be given to any person, other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid, in the same manner and to the same extent, as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

Id.

§ 5. If a conveyance to a purchaser, under either of the two last preceding sections, shall be made, before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid, from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

Conveyance, &c. of land to be in writing.

§ 6. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power, over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing.

Limitation of preceding section.

§ 7. The preceding section shall not be construed to affect in any manner, the power of a testator, in the disposition of his real estate, by a last will and testament; nor to prevent any trust from arising, or being extinguished, by implication or operation of law.

Leases for more than one year void, unless in writing.

§ 8. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

Agent may sign instrument.

§ 9. Every instrument required to be subscribed by any party, under the last preceding section, may be subscribed by the agent of such party, lawfully authorized.

Powers of courts of equity not abridged.

§ 10. Nothing in this act contained shall be construed to abridge the powers of courts of equity, to compel the specific performance of agreements, in cases of part performance of such agreements.

TITLE II.

OF FRAUDULENT CONVEYANCES AND CONTRACTS, RELATIVE TO
GOODS, CHATTELS, AND THINGS IN ACTION.

§ 1. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors existing, or subsequent of such person.

Conveyances of personal property, when void.

§ 2. In the following cases, every agreement shall be void, unless such agreement, or some note or memorandum thereof, expressing the consideration, be in writing, and subscribed by the party charged therewith.

What agreements void unless in writing.

1. Every agreement that by the terms is not to be performed within one year from the making thereof.

2. Every special promise to answer for the debt, default, or miscarriage of another person.

3. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promises to marry.

§ 3. Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars or more, shall be void, unless

Contracts for sale of goods over \$50, to be in writing.

1. A note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith; or

2. Unless the buyer shall accept and receive part of such goods, or the evidences, or some of them, of such things in action; or

3. Unless the buyer shall, at the time, pay some part of the purchase money.

§ 4. Whenever goods shall be sold at public auction, and the auctioneer shall at the time of sale, enter in a sale-book, a memorandum, specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person to [for] whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

Memorandum of auctioneer deemed note of contract in certain cases.

§ 5. Every sale made by a vendor, of goods and chattels in his possession, or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession, of the things sold, or assigned, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith; and shall be conclusive evidence of fraud, unless it shall be made to appear, on the part of the persons claiming under such sale or assignment, that the same was made in good faith, and without any intent to defraud such creditors or purchasers.

Sale deemed fraudulent unless vendee takes possession.

§ 6. The term "creditors," as used in the last section, shall be construed to include all persons, who shall be creditors of the vendor or assignor, at any time whilst such goods and chattels shall remain in his possession, or under his control.

Creditors, who to include.

§ 7. Nothing contained in the two last sections, shall be construed to apply to contracts of bottomry or respondentia, nor assignments or hypothecations of vessels or goods, at sea, or in foreign ports, or without this territory: *Provided*, The assignee or mortgagee shall take

Excepted cases.

possession of such ship, vessel, or goods, as soon as may be, after the arrival thereof within this territory.

Agent may
subscribe
instrument.

§ 8. Every instrument required by any of the provisions of this act to be subscribed by any party, may be subscribed by the lawful agent of such party.

What mort-
gag e per-
sonal pro-
perty not
valid.

§ 9. No mortgage of personal property hereafter made shall be valid against any other persons than the parties thereto, unless possession of the mortgaged property be delivered to and retained by the mortgagee, or unless the mortgage be recorded in the office of the register of deeds, where the mortgagor resides.

TITLE III.

GENERAL PROVISIONS.

Conveyan-
ces, judg-
ments, &c.
to delay
creditors,
&c. void.

§ 1. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents or profits thereof, made with the intent to hinder, delay or defraud creditors or other persons, of their lawful suits, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suits commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed or defrauded, shall be void.

Grants, &c.
of trusts to
be in writing

§ 2. Every grant or assignment of any existing trust in lands, goods or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent lawfully authorized; shall be void.

Conveyan-
ces, void as
to creditors,
void to heirs

§ 3. Every conveyance, charge, instrument or proceeding declared to be void, by the provisions of this act, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representatives or assignees, of such creditors or purchasers.

Intention to
defraud, to
be question
of fact.

§ 4. The question of fraudulent intent in all cases arising under the provisions of this act, shall be deemed a question of fact, and not of law; nor shall any conveyance or charge be adjudged fraudulent as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

Purchaser,
&c. not
affected by
this act.

§ 5. The provisions of this act shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

What 'lands'
to include.

§ 6. The term "lands," as used in this act, shall be construed as co-extensive in meaning, with "lands, tenements, hereditaments;" and the terms "estate and interest in lands," shall be construed to embrace every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in lands as above defined.

What 'con-
veyance' to
include.

§ 7. The term "conveyance," as used in this act, shall be construed to embrace every instrument in writing, (except a last will and testament,) whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, [created] aliened, assigned, or surrendered.

§ 8. The provisions of this act shall not extend to any conveyance, charge, contract, assignment, instrument or proceeding, had, made, executed or commenced, before this act shall be in force as a law.

AN ACT concerning the writ of attachment.

§ 1. If any creditor, his agent or attorney, shall make oath in writing, before any proper officer, that his debtor has absconded, as he verily believes, or shall satisfy such officer that such debtor is about to abscond, to the injury of his creditors, or that such debtor is not a resident of this territory, or that he so conceals himself as to avoid the service of process, or that such debtor is about to remove his property or effects out of the territory, or is about fraudulently to remove, convey, or dispose of the same, so as to hinder or delay his creditor, and shall file the same with the clerk of the district court, such clerk shall issue a writ of attachment, directed to the sheriff or coroner, (as the case may require,) commanding him to attach the lands, tenements, goods, chattels, rights, credits, moneys and effects, of said debtor, except such as are by law exempt from execution, wheresoever the same may be found; and if any clerk shall issue such writ without oath filed as aforesaid, such writ shall be quashed at his costs: *Provided*, That no attachment issued under the provisions of this act, at the suit of any person who is not a freeholder, or a resident of the county, shall be served by the said officer, unless the same shall be endorsed by some freeholder of the county as security for costs.

§ 2. The officer having such writ shall go to the place where the defendant's property may be found, and there, in the presence of two freeholders of the county, declare that by virtue of said writ, he attaches said property, at the suit of such plaintiff; and the said officer, with the said freeholders, who shall be under oath, to be by him administered, (and who shall for their services be allowed such sum as the court may direct,) shall make a true inventory and appraisement of all the property attached, which shall be signed by said officer and freeholders, and return with the writ, with the time when the same was served, and which, from the time of service, shall bind the property and estate of the defendant, so attached: *Provided*, That where property shall be attached in the hands of a consignee, his lien thereon shall not be affected thereby.

§ 3. Upon the return of said writ, the clerk who issued the same shall make out an advertisement, stating the names of the parties, the time when, from what court, and for what sum the writ was issued, and deliver the same to the plaintiff or his attorney, on demand, who shall cause the same, within thirty days, to be inserted in one of the newspapers printed in this territory, and nearest the place where such attachment issued, for six weeks successively; and if any plaintiff shall neglect to have such notice published, the attachment shall be dismissed, with costs.

§ 4. The property attached shall remain in the hands of such officer, unless the person in whose possession it may be found shall give bond to the officer with two sufficient sureties, freeholders of the county, in double the appraised value thereof, with condition that the same property, or its appraised value in money, shall be forthcoming to answer the judgment of the court: *Provided*, That if it shall

appear to the court that any part of said property shall have been lost or destroyed by unavoidable accident, they shall remit the value thereof to the person so bound.

When person summoned as garnishee.

To appear and answer.

To be held to bail in certain cases.

Costs in certain cases how paid.

Declaration when to be filed.

Property how released from attachment.

§ 5. If the plaintiff or other credible person shall make oath, that he has good reason to, and verily does believe, that any person (naming him) has property (describing the same) in his possession belonging to the defendant, and if the officer cannot come at such property, he shall leave with such person, at his usual place of residence, a copy of the writ of attachment and affidavit, with a written notice that he appear in court at the return of such writ, and the said garnishee shall attend accordingly, and answer under oath all questions put to him touching the property and credits of the defendant in his possession, or within his knowledge; and from the day of such service, such garnishee shall stand liable to such plaintiff, in attachment to the amount of the property, moneys and credits in his hands, or due from him to said defendant; and if such garnishee do not appear in court as required, the court may proceed against him by attachment, or if the plaintiff or other credible person shall make oath and file the same, that he has good reason to, and does verily believe, that the said garnishee will abscond before judgment and execution can be had against him, or that any other person (naming him) hath any property, moneys or credits of the defendant in his possession, or is indebted to said defendant, and that he is in fear such other person will abscond as aforesaid, it shall be lawful for the plaintiff to institute a suit by *capias ad respondendum* against such garnishee or other person, who shall be held to special bail, in which suit the plaintiff may declare for the property, moneys and credits aforesaid, as of his own proper moneys, property and credits, in trover and conversion; or if the garnishee be indebted to the defendant for money had and received, or if the garnishee shall have property, moneys or credits of the defendant in his possession, and shall also be indebted to said defendant, the plaintiff may declare in trover, adding thereto a count for money had and received, and give the special matter in evidence; and if verdict and judgment be had for the said plaintiff, execution shall thereupon be had as in other cases.

§ 6. The suit so instituted shall be continued until the action against the defendant in attachment shall be determined; and if in such action judgment shall be rendered for the defendant, the garnishee shall recover costs, and if the plaintiff shall recover against the said defendant in attachment, and if the said garnishee shall deliver to the officer executing such writ, all the property in his possession, belonging to the defendant, and pay all moneys from him due at the time of service of process on such garnishee, then the costs which have accrued in such suit against such garnishee, shall be paid out of the effects in the hands of such officer.

§ 7. The first and second term after the issuing of the writ of attachment, the defendant shall be called, and his default entered; at or before which second term the said plaintiff, and every other creditor of the defendant, may file their declarations setting forth in a proper manner their cause of action; and it shall be competent for said defendant at any time to release his goods from such attachment, by executing and delivering to the plaintiff a bond in the penal sum of double the amount of the appraised value of the goods so attached,

or of the claims filed against him, with two sufficient sureties, to be approved of by the plaintiff, or who shall justify before some district judge or supreme court commissioner, that they are severally worth the amount specified in said bond, over and above all just debts against them; said bond to be conditioned, that if judgment in the suit should be given against the defendant, then that the same property, or the appraised value thereof in money, shall be forthcoming to answer any judgment that may be recovered by the plaintiff, or other creditor against the defendant in attachment, or that they will pay the same, with all interest, damages and costs, and that execution may issue thereon immediately against the goods and chattels, lands and tenements of such sureties; and the defendant may plead to any or all of the declarations which may be filed against him; but if the said defendant shall not plead as aforesaid, the court at the said second term shall proceed at the suit of all the said plaintiffs, as in other cases by default, and the said defendant or any other on his behalf, may appear and introduce evidence before the court or jury, as in other cases of default, and shall have the same right to appeal, move in arrest of judgment, or set aside the proceedings for irregularity: *Provided*, That no judgment shall be rendered under the provisions of this act, excepting for causes arising out of, founded upon, or sounding in contract, or upon the judgment or decree of some court of law or chancery: *And provided further*, That in case judgment shall be rendered against the original plaintiff in attachment, or if he shall otherwise fail to prosecute his suit to effect, the proceedings in favor of such creditors as may have filed declarations, shall in no wise be affected thereby, but may be prosecuted to final judgment, and the property attached shall remain in the hands of the officer to satisfy the same.

Limitation.

§ 8. When any judgment shall be entered against a defendant in attachment, a scire facias shall issue against the garnishee, (except as herein before provided) to appear at the next term and show cause why the plaintiff should not have execution of the money due by him to the defendant, or of the goods and chattels of the defendant in the possession of the garnishee; and if the said garnishee shall appear upon the return of the said scire facias, and on oath or otherwise to the satisfaction of the said plaintiff, confess the amount of such debt, or the value of such goods and chattels, and deliver the same to the officer serving said attachment, or shall pay the value thereof, with all moneys from him owing to the said defendant, into court, he shall be discharged from all further liability on account of the goods so delivered, and the money so paid, and the costs thereof shall be paid out of the effects so attached; if on said scire facias, returned served on two writs returned "nihil," the said garnishee shall not appear and confess as herein before provided, judgment shall be entered against him by default, and the court shall proceed to assess the amount thereof, and award execution therefor, as in other cases; if the said garnishee shall appear at the return of the said writ or writs, and plead thereto, the issue shall be tried and the damages assessed by a jury as in other cases, and judgment shall be entered for the plaintiff in attachment against the garnishee for the amount found due from him to the defendant in attachment, and for the value of the goods belonging to the said defendant in his possession at the

Scire facias when to issue against garnishee.

Garnishee how discharged.

When garnishee does not appear.

time of serving said writ, with costs: *Provided*, No judgment against the garnishee shall exceed the whole amount of the plaintiff's demand, as ascertained by the court, and execution shall be awarded therefor; but if the said jury find in favor of said garnishee, he shall recover costs, and have execution for the same.

Property when and how sold.

Proceeds of sale how disposed of.

§ 9. After judgment for the plaintiff in attachment, all the property remaining in the hands of the officer, with the lands and tenements, if any, whether held by legal or equitable title, shall be sold by order of the court, under the same restrictions and regulations, as if the same had been levied upon by execution, and the money arising therefrom, with the amount that may be recovered from the garnishee, after discharging the judgment of the first attaching creditors, (if the two first creditors attached the property at the same time,) together with all the costs, shall be divided among the other creditors in proportion to the amount of their respective judgments; and if there be not sufficient to satisfy the whole, the said judgments so recovered shall stand, and execution may issue thereon for the residue in all respects as in other cases: *Provided*, That animals, and property of a perishable nature, may be sold by order of the court, at any time after the return of the writ.

Property in another county how attached.

§ 10. In all cases of attachment by virtue of this act, if the plaintiff, his agent or attorney, shall make and file with the clerk, an affidavit, setting forth that he verily believes that the defendant in attachment hath lands, tenements and real estate, goods or chattels, situate in any other county (naming such county) in this territory, the clerk shall, on application of the plaintiff or his attorney, make out and seal another writ of attachment, directed to the sheriff or coroner of the county in which such other property shall be, who shall serve and return the same, in the same manner, and for neglect shall be liable to the same penalty, as if such writ had issued and was returnable in his own county, and on such writ executed, there shall be the same proceedings as are hereinbefore directed.

Writ to issue against joint or separate estate.

§ 11. When two or more are jointly bound or indebted, either as joint obligors, partners or otherwise, the writ of attachment provided for by this act may be issued against the separate or joint estates, or both of such joint debtors, or any of them, in the same manner and under the same restrictions as are provided for by this act in other cases.

Not abated by death.

§ 12. If any defendant shall die after a writ of attachment shall have issued against him, it shall not thereby abate, but the same shall be carried on to judgment, sale and distribution, as if such death had not happened.

AN ACT to provide for the collection of demands against boats and vessels.

Boats, &c. for what debts liable.

§ 1. That every boat or vessel used in navigating the waters of this territory shall be liable,

1st. For all debts contracted by the master, owner, agent or consignee thereof, on account of supplies furnished for the use of such boat or vessel, on account of work done or services rendered on board of such boat or vessel, or on account of labor done, or materials fur-

nished by mechanical tradesmen or others in and for building, repairing, fitting out, furnishing or equipping such boat or vessel.

2d. For all sums due for wharfage or anchorage of such boat or vessel within this territory.

3d. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or any contract touching the transportation of persons or property, entered into by the master, owner, agent or consignee of the boat or vessel, on which such contract is to be performed: and

4th. For all injuries done to persons or property by such boat or vessel.

§ 2. That any person having demand as aforesaid, instead of proceeding for the recovery thereof against the master, owner, agent or consignee of a boat or vessel, may, at his option, institute suit against such boat or vessel by name. Debt, &c. may be collected of boat, &c.

§ 3. That any plaintiff wishing to institute suit against a boat or vessel, shall file his complaint against such boat or vessel by name, with the clerk of the district court of the county in which such boat or vessel shall lie or be. Suit, how instituted against boat.

§ 4. That the complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued. It shall be verified by the affidavit of the plaintiff, or some credible person or persons for him, and shall stand in lieu of a declaration. lb.

§ 5. That whenever any complaint as aforesaid shall be filed in the office of the clerk of the district court, it shall be his duty to issue a warrant returnable as a summons, directing and authorizing the sheriff to seize the boat or vessel mentioned in the complaint, and detain the same in his custody, together with its tackle, apparel and furniture, until discharged from such custody by due course of law. Warrant to be issued.

§ 6. That upon the return of any warrant issued by virtue of the next preceding section, proceedings shall be had in the district court against the boat or vessel seized, in the same manner as if suit had been instituted against the person on whose account the demand accrued. Proceedings how conducted.

§ 7. That the master, owner, agent or consignee of the boat or vessel may appear on behalf of such boat or vessel, and plead to the action. Who may defend, &c.

§ 8. That the district court may by rule prescribe the time and manner of pleading, of exhibiting or filing papers, or taking any needful steps in any suit to be commenced under this act, when the time and manner is not prescribed by this law. Pleading, &c.

§ 9. That if the master, owner, agent or consignee shall, before final judgment in any suit instituted by virtue of this act, give bond to the plaintiff in such suit with sufficient sureties, to be approved of by the court, or the judge or clerk thereof in vacation, conditioned to satisfy the amount which shall be judged to be owing and due to the plaintiff in the determination of the suit, together with all costs accruing, such boat or vessel, with the tackle, apparel and furniture belonging thereto, shall be discharged from further detention by the sheriff. How boat, &c. discharged from detention.

§ 10. That if judgment shall be rendered against any boat or vessel in favor of the plaintiff, the court shall make an order directed to the sheriff, commanding him to sell such boat or vessel, together with Boat may be sold.

its tackle, apparel and furniture, to satisfy the judgment, and all costs that may have accrued in the cause, which order shall be executed and returned in the same manner as executions.

Execution
for plaintiff,
how issued.

§ 11. That if bond and security shall have been entered into according to the ninth section of this act, and judgment shall have been rendered in favor of the plaintiff, execution shall be issued for the amount of judgment and costs, in favor of the plaintiff, against the principal and security in such bond.

Justices to
have cogni-
zance, &c.

§ 12. That justices of the peace within their respective counties shall have cognizance of all cases arising under this act, when the demand claimed shall not exceed the jurisdiction of a justice of the peace.

Proceedings
before jus-
tice.

§ 13. That in all their proceedings, justices of the peace shall conform to the provisions of the law governing justices' courts, and as near as may be to the provisions of this act as they apply in the district court.

Warrant is-
sued by jus-
tice, how re-
turned.

§ 14. That each warrant issued by a justice of the peace under this act shall be returnable forthwith, and upon the return of such warrant it shall be the duty of the justice of the peace to hear and determine the complaint of the plaintiff in a summary manner.

Id.

§ 15. That all warrants issued by this act shall be served and returned as writs of attachments are served and returned.

Part of boat,
&c. may be
sold.

§ 16. That whenever an order of sale shall be made for the sale of a boat or vessel, with its tackle, apparel and furniture, the sheriff or constable shall have power to sell such part thereof, or such interest therein, as shall be necessary to satisfy the amount of the judgment rendered in favor of the plaintiff, and all the costs that may have accrued.

Continuance
how granted

§ 17. That upon good and sufficient cause shown by the master, owner, agent or consignee of any boat or vessel, sued under this act, the court, or justice of the peace may grant a continuance of the cause, but no such continuance shall operate as a discharge of such boat or vessel from the custody of the sheriff or constable.

When refus-
ed.

§ 18. That no continuance of a cause under this act shall be granted to the plaintiff.

Fees of offi-
cers.

§ 19. That sheriffs, constables and other officers shall receive the same fees and compensation for their services under this act, as are allowed them in cases of suits of attachment.

Appeal al-
lowed.

§ 20. That in all cases arising under this act, if judgment shall have been rendered in favor of a plaintiff, the master, owner, agent or consignee of the boat or vessel, or other person interested, may appeal from the judgment, or sue out a writ of error, as if they or either of them, had been sued.

Time allow-
ed for bring-
ing action.

§ 21. That all actions against a boat or vessel under the provisions of this act, shall be commenced and sued within one year after the cause of such action shall have accrued.

AN ACT concerning insolvent debtors.

Debtor may
assign for
benefit of
creditors.

§ 1. Any debtor may assign and convey his property to his creditors, or to one or more assignees or trustees for the use of his creditors in the manner hereinafter mentioned, and such assignment shall

be valid and effectual against any attachment or execution thereafter made or levied on any of the property so assigned.

§ 2. Such debtor shall annex to such instrument of assignment a schedule containing,

Contents of schedule to be annexed to instrument of assignment.

1. A full and true account of all his creditors, to the best of his knowledge and belief.

2. The place of residence of each creditor, if known to such insolvent, and if not known, the fact to be so stated.

3. The sum owing to each creditor, as near as may be known, and the nature of each debt or demand, whether arising on written security, on account, or otherwise.

4. The true cause and consideration of such indebtedness in each case, and the place where such indebtedness accrued.

5. A statement of any existing judgment, mortgage, or collateral or other security for the payment of any such debt.

6. A full and true inventory of all the estate, (*to the*) real and personal, in law and equity, of such insolvent, except such as is by law exempt from execution, of the incumbrances existing thereon, and of all the books, vouchers and securities relating thereto.

§ 3. Such debtor shall make an affidavit, which shall also be annexed to the assignment, and shall be in substance as follows :

Debtor to make affidavit.

"I do swear that the account of my creditors and the inventory of my estate, which are annexed to my assignment, are in all respects just and true to the best of my knowledge and belief; and that I have not at any time or in any manner whatsoever, disposed of, or made over, any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors, and that I have in no instance created or acknowledged a debt for a greater sum than I honestly and truly owed."

Form of affidavit.

§ 4. All persons who are endorsers or sureties for the debtor, or who have demands against him as drawer, or endorser of any bills of exchange, or endorser of any note, and all who have demands upon any policy of insurance, or any bottomry or respondentia bond, or for a debt that may become due on any other contingency whatever, may be considered as creditors within the provisions of this act: *Provided*, That the bill, note, bond, or other contract, be made by the debtor before the date of the assignment: *And provided also*, that the debt demanded thereupon shall become absolute before the final dividend of the assigned property.

Who may be considered creditors.

§ 5. The assignment shall be so made as to give to each of the creditors, who shall become parties to it, a share of the property in proportion to their respective debts, without any preference, excepting as to such debt as by the laws of the United States, or of this territory, may be entitled to a preference in such case.

Assignment, how made.

§ 6. All the creditors shall have a right to become parties to the assignment, provided they apply therefor before the final dividend is declared; but no creditor who comes in after any dividend is declared, shall be allowed to disturb the same, but he shall receive an equal proportion with the other creditors, so far as the funds then remaining unappropriated in the hands of the assignees shall be sufficient therefor.

Creditors may become parties.

§ 7. The assignees shall as soon as may be, after the assignment, give notice thereof by advertisement in some newspaper printed in the

Assignees to give notice.

county where the debtor resides, if there is one, otherwise in some newspaper in the territory; and such advertisement shall be published not less than once a week for three weeks successively, at least two months before any dividend shall be declared.

Assignees to declare and pay dividends.

§ 8. The assignees shall declare and pay dividends from time to time as soon as may be, after converting the effects into money: *Provided*, That when it shall appear that there are creditors, who, from their distant residence, or other sufficient reason, cannot become parties to the assignment before the making of the first dividend, or when it shall appear that there are any of the classes of creditors named in the fourth section, whose debts shall not have, but may afterwards become absolute, the assignees may retain the shares which such creditors may be entitled to.

District court may remove assignees, &c.

May cause settlement of estate.

§ 9. The district court may, upon the petition or other application of the debtor, or of the assignees, or of any creditor or other person interested in the case, remove any assignee for any sufficient cause, and upon such removal, or upon the death or resignation of an assignee, appoint another in his place; and may cause a just and prompt settlement of the estate of the insolvent, and a distribution thereof among all who are entitled thereto, having a due regard to the rights of creditors, who, by reason of their distant residence or otherwise, may be delayed in presenting their claims and becoming parties to the assignment, or whose debts may not have become absolute, and generally may hear and determine as a court of chancery all matters arising under any such assignment, and make such orders and decrees therein as law and justice may require, and as shall be necessary and proper to carry into effect the provisions of this act: *Provided*, That when the amount claimed as due to any supposed creditor is disputed by the debtor or the assignees, or by any other creditor, the same shall, if required by either party, be determined by a jury, upon an issue to be framed under the direction of the court, or by referees chosen by the parties.

Debtor making assignment discharged from certain debts.

§ 10. Every debtor who shall make such an assignment as is herein before mentioned, shall be discharged from all debts due to any of his creditors who shall become parties to the assignment, excepting as is provided in the following sections; but no such discharge shall release any person who may be liable for the same debt as a partner, joint contractor, endorser, acceptor or surety, for or with the debtor.

When debtor or not to be discharged.

§ 11. The debtor, if afterwards sued for any such debt, shall have no benefit of the said discharge, but judgment shall be rendered against him for the amount that shall then appear to be due, if the plaintiff shall prove any of the following facts, to wit:

1st. That the debtor has fraudulently concealed, reserved or disposed of any of his property, which the laws do not exempt from execution, to the amount of one hundred dollars.

2d. That he did knowingly and wilfully make any false statement, in any disclosure made to or for his creditors, concerning the amount or the disposition of his property.

3d. That he did at any time after this act shall have gone into operation, and in contemplation of such an assignment of his property as is herein provided for, voluntarily make any payment, or any transfer or conveyance of any part of his property, with a view to

give to any creditor, or to any endorser or surety for the debtor, a preference or advantage over the other creditors contrary to the intent and purpose of this act.

§ 12. The debtor shall not be required to plead his discharge specially, but may give it in evidence under the general issue. How debtor to plead discharge.

§ 13. No assignment or conveyance made by any insolvent debtor to assignees or trustees for the use of any of his creditors, shall be valid and effectual against an attachment or execution in behalf of any creditor who is not a party to it, unless it is so made as to allow all the creditors of the debtor to become parties to it if they see fit; and unless also, it is so made as to give to each of the creditors who shall become parties to it, an equal share of the property in proportion to their respective debts, excepting only such creditors as may by the laws of the United States, or of this territory, be entitled in such case to a preference. When assignment not valid against creditor not a party to it.

AN ACT for relief of persons confined in jail on civil process.

§ 1. Every person confined in jail in [on] an execution issued on a judgment recovered in an action of tort, shall be discharged therefrom at the end of ten days from his first confinement, upon the conditions hereinafter specified. When certain persons discharged from prison.

§ 2. Such person shall cause notice to be given to the plaintiff in the suit, his agent or attorney, in writing, that on a certain day and hour, and at a certain place, he will apply to two justices of the peace, of the county where the person is committed, stating the names of such justices, for the purpose of obtaining a discharge from his imprisonment. Notice to be served on plaintiff.

§ 3. Such notice shall be served by a copy on the plaintiff, his agent or attorney, twenty-four hours before the hour for hearing the application, in cases where the plaintiff, his agent or attorney lives within twenty miles of the place of the hearing; and twenty-four hours shall be added to the time of the notice, for every twenty additional miles the plaintiff, his agent or attorney, shall reside distant from such place. Notice how and when served.

§ 4. At the time and place specified in such notice, such person shall be taken under the custody of the jailer, or the sheriff, or his deputy, before such justices, who shall examine the prisoner on his oath, concerning his estate and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and they shall also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor. Prisoner to be examined on oath.

§ 5. The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories, pertinent to the inquiry, and they shall, if required by the creditor, be proposed and answered in writing, and the answers shall be signed and sworn to by the prisoner; and the plaintiff in the action may have a copy of the interrogations and answers, certified by the justices, upon paying therefor the legal fees. Plaintiff may propose interrogatories.

§ 6. If upon such examination, the justices shall be satisfied that the prisoner is entitled to his discharge, they shall administer to him the following oath, to wit: Oath to be administered.

Form of
oath.

"I do solemnly swear, that I have not any estate, real or personal, to the amount of twenty dollars, except such as is by law exempted from being taken in execution, and that I have not any other estate, now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to defraud my creditors. So help me God."

Justices to
make certificate.

§ 7. After administering the oath the justices shall make a certificate under their hands as follows :

To the sheriff or jailer of the county of

The undersigned, two justices of the peace for said county, certify that confined in your jail upon an execution at the suit of is entitled to be discharged from imprisonment, if he be imprisoned for no other cause.

Jailer to discharge prisoner.

§ 8. The jailer upon receiving such certificate, shall forthwith discharge the prisoner, if he be imprisoned for no other cause.

Provision when not discharged on first application.

§ 9. If such justices should not discharge the prisoner, he shall be entitled to apply for his discharge at the end of every succeeding ten days, in the same manner as above provided, and the same proceedings shall thereupon be had.

Effect of discharge.

§ 10. The prisoner after being so discharged, shall be forever exempted from arrest or imprisonment for the same debt, unless he shall be convicted for having wilfully sworn falsely upon his examination before the two justices, or in taking the oath before prescribed.

Discharge of prisoner not to affect plaintiff's rights.

§ 11. The judgment against any prisoner, who is discharged as aforesaid, shall remain in full force against any estate, which may then, or at any time afterwards, belong to him ; and the plaintiff in the action may take out a new execution against the goods and estate of the prisoner, in like manner as if he had never been committed on the execution.

When debtor to support himself in prison.

§ 12. If the debtor shall undertake to satisfy the execution, he shall not be entitled to his discharge until he has paid all the charges for his support in prison, in addition to the sum due on the execution, and the costs and charges thereon.

Plaintiff may order prisoner discharged.

§ 13. The plaintiff in the action may at any time order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action.

Creditor to advance money for support of prisoner.

§ 14. Whenever a person is committed to jail on execution issued on a judgment recovered in a civil suit, the creditor, his agent or attorney, shall advance to the jailer within twenty-four hours after such commitment, sufficient money to pay for the support of said prisoner during the time for which he may be imprisoned ; and in case the money should not be so advanced, or if during the time the prisoner may be in confinement the money should be expended in the support of such prisoner, the jailer shall forthwith discharge such prisoner from custody, and such discharge shall have the same effect as a discharge by order of the creditor.

AN ACT concerning bills of exchange and promissory notes.

Damages on bills of exchange on person out of U. S.

§ 1. When any bill of exchange which may be drawn within this territory, upon any person or persons, body politic or corporate, out of the United States, or territories thereof, for any sum of money, shall be duly presented for acceptance or payment, and pro-

tested for non-acceptance or non-payment, the drawer or endorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill with legal interest, according to the tenor thereof, and twenty per cent damages in addition, together with costs and charges of protest.

§ 2. If any bill of exchange drawn upon any person or body politic or corporate, out of this territory, but within some state or territory of the United States, adjoining to this territory, for the payment of money, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or endorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill with legal interest, according to its tenor, and five per cent damages, together with costs and charges of protest.

Damages on bills on person in adjoining state.

§ 3. If any bill of exchange drawn upon any person, or body politic or corporate, out of this territory, but within the United States, or territories thereof, and not adjoining to this territory, for the payment of money, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or endorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill with legal interest, according to its tenor, and ten per cent damages, together with costs and charges of protest.

When drawn on person in state not adjoining.

§ 4. All notes in writing made and signed by any person or by a factor, or agent of any merchant or trader usually entrusted therewith, whereby such person or any merchant or trader, by such factor or agent, shall promise to pay to any other person, body politic or corporate, his or their order, or unto bearer, any sum of money therein mentioned, shall by virtue thereof be taken and construed to be due and payable, as therein expressed, and shall have the same effect and be negotiable in like manner, as inland bills of exchange, according to the custom of merchants; and the payees or endorsees of every such note payable to them, or their order, shall and may maintain their action for such sum of money, against the makers and endorsers of the same respectively, in like manner as in cases of inland bills of exchange, and not otherwise.

Notes payable to bearer, &c. negotiable.

AN ACT to regulate weights and measures.

§ 1. That there shall be but one standard of measure of length and surface, one of weight and one of measure of capacity, in this territory.

But one standard measure.

§ 2. That the unit or standard measure of length and surface, from whence all other measures of extension, whether they be linear, superficial or solid, shall be derived and ascertained, shall be the yard as now in legal use in the state of New-York.

Standard of length to be yard.

§ 3. That the yard shall be divided into three equal parts, called feet, and each foot into twelve equal parts, called inches; and for measure of cloths and other commodities, commonly sold by the yard, it may be divided into halves, quarters, eighths and sixteenths.

Yard, how divided.

§ 4. That the rod, pole or perch shall contain five such yards and a half; the furlong two hundred and twenty such yards; and the mile one thousand seven hundred and sixty such yards.

Rod, &c. length of.

Acre, how
measured,
&c.

§ 5. That the acre, for land measure, shall be measured horizontally, and shall be equal to a rectangle sixteen such rods, poles or perches in length and ten in breadth, and shall contain one hundred and sixty square rods, poles or perches, or four thousand eight hundred and forty square yards; six hundred and forty such acres being contained in a square mile.

Standard of
weight to be
the pound.

§ 6. That the unit or standard of weight, from which all other weights shall be derived and ascertained, shall be the pound as the same is now in legal use in the state of New-York; and the said pound shall be divided into sixteen equal parts, called ounces.

Of capacity
to be gallon.

§ 7. That the unit or standard of measures of capacity, as well for liquids as for any dry commodities not measured by heaped measure, from which all other measures of capacity shall be derived and ascertained, shall be the gallon.

Two kinds of
gallons.

§ 8. That there shall be two kinds of gallons, one for the measure of all liquids, and one for the measure of all other substances, not measured by heaped measure, the first to be denominated the gallon for liquid measure, and the second to be denominated the gallon for dry measure.

What to be
gallon.

§ 9. That the gallon for liquid, and the gallon for dry measure, shall be the same as now in legal use in the state of New-York.

Liquid mea-
sures, how
divided.

§ 10. That all other measures of capacity for liquids shall be derived from the liquid gallon, by continual division by the number two, so as to constitute half gallons, quarts, pints, half pints and gills.

For substan-
ces not li-
quid, how
divided.

§ 11. That all other measures of capacity for substances not being liquid, nor sold by heaped measure, shall be derived from the gallon for dry measure, by continual multiplication by the number two in the ascending scale, so as to constitute pecks, half bushels and bushels, and by continual division, by the same number, in the descending scale, so as to constitute half gallons, quarts, pints, half pints and gills.

Bushel for
heaped mea-
sure, what
to be.

§ 12. That the bushel for measuring commodities usually sold by heaped measure, shall be the same as now in legal use in the state of New-York, and shall be the standard measure of capacity for charcoal, ashes, Indian corn in the ear, fruit and esculent roots of every kind, and for all other commodities usually sold by heaped measure; and the measure used to measure such commodities shall be made round, with a plane and even bottom, and shall be of the following diameters at top, measured from outside to outside: the bushel nineteen and a half inches, the half bushel fifteen and a half inches, and the peck twelve and a third inches.

Commodi-
ties to be
heaped.

§ 13. That all commodities sold by heaped measure shall be duly heaped up in the form of a cone, the outside of the measure by which the same shall be measured to be the extremity of the base of such cone; and such cone shall be as high as the articles to be measured will admit.

Contracts
deemed ac-
cording to
standard.

§ 14. That all contracts hereafter to be made or executed, in this territory, for any work to be done, or for any thing to be sold, delivered, done, or agreed for by weight or measure, shall be taken and construed to be made according to the standard weight and measure hereby established: *Provided*, That nothing herein contained shall be construed to prevent parties from adopting a different standard of weight and measure, by mutual agreement.

§ 15. That the standards above mentioned shall be procured by the treasurer of the territory, and kept by him at his office, and shall be made of iron, brass or copper, as he shall direct; and he shall be, ex officio, sealer of weights and measures.

Standard to be kept by treasurer.

§ 16. That the county treasurers shall be, ex officio, the sealers of weights and measures, within their respective counties, and shall, at the expense of their counties, each of them procure a complete set of weights and measures, for the use of their respective counties, compared with those required to be kept by the treasurer of the territory, sealed and certified by him; and the weights and measures so procured shall be the standard of weights and measures of the counties respectively.

County treasurers to be sealers.

§ 17. That the word WISCONSIN shall be impressed on the territorial standard weights, measures and beams, and on the several county standard weights, measures and beams, (and) such other device as the said treasurer shall direct, in addition for each county; which device shall be recorded by the clerks of the district courts in the counties respectively; and the said county treasurers shall have the custody of the standard weights and measures of the counties respectively, and shall impress upon all weights and measures sealed by them, the word WISCONSIN.

Standard weights, measures, &c. how stamped.

§ 18. That it shall be the duty of the several county treasurers to compare their standard weights and measures with the said territorial standards, once in five years, and to post up a notice at the usual place of holding courts in the county, immediately on receiving the said standard of the county, that the said standards have been received; and the said county treasurers and treasurer of the territory, shall each be entitled to receive for his services in sealing and marking weights, beams and measures, and steelyards, which shall be brought to him for that purpose, six cents each.

County standards compared with territorial.

Compensation for sealing.

§ 19. That whenever either of the sealers of weights and measures mentioned in this act, shall resign or be removed from office, or whenever the office shall become vacant in any way, except by death, it shall be the duty of the sealer to deliver to his successor in office all the standards, beams, weights and measures in his possession.

Standards delivered to successor.

§ 20. That in case of the death of such sealer of weights and measures, his representatives shall in like manner deliver to his successor in office such beams, weights and measures.

§ 21. That in case of refusal or neglect to deliver such standards entire and complete, the successor in office may maintain an action on the case against the person or persons so refusing or neglecting, and shall recover double the value of such standards as shall not have been delivered. And in every such action in which judgment shall be rendered for the plaintiff, he shall recover double costs; and one moiety of the damage recovered in such action shall be retained by the person recovering, and the other moiety shall be applied by him to the purchase of such standards as may be required in his office.

Proceedings upon neglect or refusal.

§ 22. That if any person or persons shall hereafter use any weights, measures, beams or steelyards in weighing or measuring, which shall not be conformable to the standards of this territory as established by this act, whereby any purchaser or seller of any commodity or article

Penalty for using weights, &c. not conformable to standard.

of trade or traffic shall be injured or defrauded; such seller or purchaser may maintain an action on the case against the offender, and if judgment shall be rendered for the plaintiff he shall recover treble damages and costs of suit.

Hundred weight and ton.

Bushels of wheat, rye, &c.

§ 23. That the hundred weight shall consist of one hundred pounds avoirdupois, and twenty such hundreds shall constitute a ton.

§ 24. That whenever wheat, rye, Indian corn, barley or oats, shall be sold by the bushel, and no special agreement as to the measurement or weight thereof shall be made by the parties, the bushel shall consist of sixty pounds of wheat, fifty-six pounds of rye or Indian corn, forty-five pounds of barley and thirty-two pounds of oats.

AN ACT concerning the tenure of real property, the persons capable of holding and conveying, and the manner of transmitting the title thereto.

1st. Tenure of real property.

2d. Persons capable of holding and conveying real estate.

3rd. Of conveying estates by deed.

4th. Manner of devising land and directing the descent of intestate estates.

5th. Sale of mortgaged premises by advertisement.

6th. Of the partition of land.

7th. Miscellaneous provisions.

Tenure of real property.

Estate tail abolished.

§ 1. All estates tail shall be and are hereby abolished; and in all cases where any person or persons now is or are seised in fee tail of any lands, tenements or hereditaments, such person or persons shall be deemed to be seised of an allodial estate.

Persons seised in fee tail to hold allodial estate.

§ 2. In all cases where any person or persons would, if this act had not been passed, at any time hereafter become seised in fee tail, of any lands, tenements or hereditaments, by virtue of any devise, gift, grant, or other conveyance heretofore made, or hereafter to be made, or by any other means whatsoever, such person or persons, instead of becoming seised thereof in fee tail, shall be deemed and adjudged to be seised thereof as an allodium.

Conveyance by tenant in tail, to convey allodial estate in certain cases.

§ 3. Where lands, tenements or hereditaments heretofore have been devised, granted, or otherwise conveyed by a tenant in tail, and the person or persons to whom such devise, grant or other conveyance hath been made, his, her, or their heirs or assigns, hath or have from the time such devise took effect, or from the time such grant or other conveyance was made, to the day of passing this act, been in the uninterrupted possession of such lands, tenements or hereditaments, and claiming and holding the same under, or by virtue of such devise, grant, or other conveyance, then such devise, grant or other conveyance, shall be deemed as good, legal and effectual, to all intents and purposes, as if such tenant in tail had, at the time of making such devise, grant or other conveyance, been seised of such lands, tenements or hereditaments allodially, any law to the contrary hereof notwithstanding.

No estate in joint tenancy, except, &c.

§ 4. No estate in joint tenancy in lands, tenements, or hereditaments, shall be held or claimed by or under any grant, devise or conveyance whatever, hereafter to be made, other than to executors or trustees, unless the premises therein mentioned shall expressly be thereby declared to pass, not in tenancy in common, but in joint tenancy; and every such estate, other than to executors or trustees,

unless otherwise expressly declared as aforesaid, shall be deemed to be in tenancy in common; any law, custom or usage to the contrary notwithstanding.

Persons capable of holding and conveying real estate.

§ 5. Any person lawfully seised of any lands, tenements or hereditaments, within this territory, in his or her own right, in fee simple, or for the life or lives of any other person or persons of the age of twenty-one years or upwards, and of sane mind, shall have power to give, dispose of, and devise the same, as well by last will and testament in writing, as otherwise, by any act executed in his or her lifetime, to and among his or her children, or others, as he or she shall think fit.

How and by whom lands conveyed.

§ 6. It shall and may be lawful for any alien or aliens to purchase lands, tenements and hereditaments within this territory, and to have and to hold the same to himself, herself or themselves, to his, her or their heirs and assigns forever, as fully to all intents and purposes as any natural born citizen of the United States can, may or does; and it shall and may be lawful for all aliens to mortgage and to take mortgages in his, her, or their own names, of land or lands, tenements and hereditaments, in the same manner as natural born citizens of the United States.

Aliens may purchase and hold real estate.

§ 7. The title of any person or persons to any lands, tenements and hereditaments within this territory, heretofore conveyed, shall not be questioned or impeached by reason of the alienage of any person or persons from or through whom such title may have been derived.

Title not questioned for alienage.

§ 8. All persons authorized by this act to purchase and hold land in this territory, may also take and acquire by devise or descent: *Provided*, That nothing in this act shall be construed to confer on any alien any other right or privilege appertaining to citizens of the United States, except those of taking, holding and disposing of real estate within this territory.

Who can hold land and acquire title by descent, &c.

Of conveying estates by deeds.

§ 9. All deeds or other conveyances of any lands, tenements or hereditaments, lying in this territory, signed, sealed and delivered by the parties granting the same, having good and lawful right and authority thereunto, and signed by two or more witnesses, and acknowledged by such grantor or grantors, or proved and recorded as hereinafter provided, shall be good and valid to pass the same lands, tenements or hereditaments, to the grantee or grantees, without any other act or ceremony in law whatever.

What to be deemed valid deed.

§ 10. All such deeds or other conveyances of or concerning any lands, tenements or hereditaments lying within this territory, or whereby the same may be in anywise affected in law or equity shall be acknowledged by the party or parties executing the same, or proved by one or more of the subscribing witnesses thereto, before one of the judges or commissioners of the supreme court, a notary public, or a justice of the peace of any county within this territory and a certificate of such acknowledgment or proof being endorsed thereon, and signed by the person before whom the same was taken, such deed or conveyance shall be recorded in the office of register of deeds for

Deeds, &c. to be acknowledged and recorded.

When ad-
judged frau-
dulent.

the county where such lands, tenements or hereditaments respectively are situated, lying and being; and every such deed or conveyance that shall at any time after the publication hereof be made and executed, and which shall not be acknowledged, proved and recorded as aforesaid, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee, for valuable consideration, without notice, unless such deed or conveyance be recorded as aforesaid, before the recording of the deed or conveyance under which such subsequent purchaser or mortgagee may claim.

Deed of
feme covert
to bar claim
to dower.

§ 11. Where any feme covert shall join with her husband in any deed or conveyance, of or relating to any lands or real estate, situated within this territory, or where she alone, without joining with her husband, shall execute a release of dower, she shall be barred of and from all claim of dower, and all other right and title therein, in like manner as if she were sole; and the acknowledgment or proof of such deed, conveyance or writing, may be the same as if she were sole, and shall entitle such deed, conveyance or writing to be recorded as aforesaid.

Deed of she-
riff to be
good.

§ 12. All deeds or conveyances by a commissioner, sheriff, or other officer, for lands sold by virtue of any decree or judgment of any court, or by virtue of any power of sale contained in any mortgage, shall be good and effectual for passing such title to the lands so sold, as the person may have in whose name they may be sold, and as such commissioner, sheriff, or other officer may be authorized to convey.

Deeds to be
recorded in
order of
time, &c.

§ 13. Every deed, conveyance or other writing, of or concerning any lands or real estate within this territory, which by virtue of this act shall be entitled to be recorded, shall be recorded in the order of the time when the same shall be delivered to any register for that purpose, and shall be considered as recorded from the time it was so delivered; and the said register shall make an entry in the margin of the record thereof, of the day, month and year, and the time of the day when the same is recorded, and endorse and sign a certificate on such deed, conveyance or writing, of the particular time when, and the book and page in which the same is so recorded; and every deed, conveyance or writing, so acknowledged or proved, whether the same be recorded or not, or the record or a transcript of the record, certified by the register in whose office the same may be recorded, under his hand, may be read in evidence in any court in this territory, without farther proof thereof.

When re-
ceived as
evidence.

Deeds made
out of terri-
tory how to
be acknow-
ledged.

§ 14. All deeds and conveyances of lands, tenements or hereditaments, situate, lying and being within this territory, which shall hereafter be made and executed in any other territory, state or country, whereby such lands, tenements or hereditaments shall be conveyed in whole or in part, or otherwise affected or incumbered in law, shall be acknowledged or proved, and certified according to and in conformity with the laws and usage of the territory, state, or country, in which such deeds or conveyances were acknowledged and proved; and all such deeds and conveyances are hereby declared effectual and valid in law to all intents and purposes, as though the same acknowledgments had been taken, or proof of execution made within this territory, and in pursuance of the laws thereof; and such deeds and conveyances so acknowledged or proved as aforesaid, may be ad-

mitted to be, and shall be recorded in the respective counties in which such lands, tenements or hereditaments, do or may lie.

§ 15. All deeds and conveyances of lands, tenements and hereditaments, situate, lying and being within this territory, which have been acknowledged or proved in any other territory, state or country, according to and in compliance with the laws and usages of such territory, state or country, and which deeds or conveyances have been recorded in this territory, are hereby confirmed and declared effectual and valid in law to all intents and purposes, as though the said deeds or conveyances so acknowledged or proved and recorded, had, prior to being recorded, been acknowledged or proved within this territory.

Deeds so acknowledged to be valid.

§ 16. All mortgages of any lands or tenements situated in this territory, and the power of sale, if any therein mentioned or contained, shall be recorded at length in proper books kept for that purpose by the register of deeds of the county where such lands or tenements are situated.

Mortgages to be recorded.

§ 17. In case of several mortgages of the same premises, or any part thereof, the mortgage or mortgages which shall be first recorded as aforesaid, shall have preference in all courts of law and equity, according to the time of registry of such mortgages, respectively: *Provided*, The mortgage or mortgages so preferred (to) be made bona fide, and upon good and valuable consideration: *And further*, That no mortgage, nor any deed, conveyance or writing in the nature of a mortgage, shall defeat or prejudice the title or interest of any bona fide purchaser of any lands or tenements, unless the same shall have been duly recorded as aforesaid.

Mortgage first recorded to have preference, if bona fide.

§ 18. Every deed conveying real estate, which by any other instrument in writing shall appear to have been intended as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage, and deemed and adjudged to be liable to be recorded, as other mortgages are by virtue of this act; and the person or persons for whose benefit such deed shall be made, shall not have the privilege of foreclosure by advertisement, unless every instrument and writing operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage, or conditional deed, be also therewith recorded, in substance, as in case of mortgage.

Conveyance when considered a mortgage.

To be recorded.

§ 19. Whenever any lands are sold and conveyed, and a mortgage is given at the same time by the purchaser, to secure the payment of the purchase money, such mortgage shall be preferred to any previous judgment which may have been obtained against such purchaser.

What mortgages to be preferred to judgments.

§ 20. When any mortgage so recorded shall be redeemed or discharged, and a certificate thereof, signed by the mortgagee, or mortgagees, his or their personal representatives or assigns, in the presence of two or more witnesses, and proved or acknowledged in the same manner as the execution of such mortgage is above directed to be proved and acknowledged, and such proof or acknowledgment also certified in like manner, be produced to the register of deeds of the county in which the same is recorded, the said register shall record the same in the said book of record of mortgages, which record shall

Certificate of discharge to bar entry of mortgage.

be deemed and taken to be an absolute bar to the first entry of such mortgage or mortgages.

Manner of devising lands, and directing the descent of intestate estates.

Devises, &c.
how execut-
ed.

§ 21. All devises and bequests of any lands or tenements shall be in writing, and signed by the party so devising the same, or by some person in his presence and by his express direction, and shall be attested and subscribed in the presence of the said devisor by three or more credible witnesses, or else shall be void and of no effect.

How wills,
&c. may be
revoked.

§ 22. No will of land, tenement or hereditament, or any clause thereof, shall be revokable, otherwise than by some other will, codicil or other writing, executed in the presence of three witnesses, declaring the same, or by burning, cancelling, tearing or obliterating the same, by the testator himself, or in his presence and by his direction and consent.

Nuncupa-
tive wills,
how made.

§ 23. No nuncupative will shall be good when the estate thereby bequeathed shall exceed the value of one hundred and fifty dollars, that is not proved by the oath of three witnesses at least, that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect; nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more, next before the making of such will, except where such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

1b. how
proved.

§ 24. After six months shall have passed after speaking any pretended testamentary words, no testimony shall be received to prove the same as a nuncupative will, unless the said words, or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken. Nor shall letters testamentary or probate of any nuncupative will pass the seal of any probate court, until fourteen days at least after the decease of the testator, be fully expired. Nor shall any nuncupative will be at any time approved and allowed, unless process shall first have issued to call in the widow and other person or persons principally interested, if resident within the territory, to the end that they may contest the same, if they please.

Legacy to
witness of
will, &c.
void.

§ 25. If any person has attested or shall attest the execution of any will or codicil, to whom any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal estate, other than and except charges on lands, tenements or hereditaments, for the payment of any debt or debts, shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment shall, so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be utterly void; and such person shall be admitted as a witness to the execution of such will or codicil, such devise, legacy, estate, interest, gift or appointment notwithstanding.

§ 26. In case by any will or codicil already made or hereafter to be made, any lands, tenements or hereditaments are, or shall be charged with any debt or debts, or any creditor whose debt is so charged, hath attested or shall attest the execution of such will or codicil, every such creditor, notwithstanding such charge, shall be admitted as a witness to the execution of such will or codicil.

Creditor may witness will.

§ 27. If any person hath attested or shall attest the execution of any will or codicil, to whom any legacy or bequest is or shall be thereby given, and such person, before he or she shall give his or her testimony concerning the execution of any such will or codicil shall have been paid, or have accepted or released, or shall refuse to accept such legacy or bequest upon tender thereof, such person shall be admitted as a witness to the execution of such will or codicil, notwithstanding such legacy or bequest : *Provided always*, That the credit of such witnesses as aforesaid, shall be subject to the consideration of the court or jury before whom such witness or witnesses may be examined, or his or her testimony or attestation made use of in like manner, to all intents and purposes, as the credit of other witnesses in all other causes, ought to be considered of and determined.

Legatee, witness in certain cases.

§ 28. In case any legatee, as aforesaid, who hath attested the execution of any will or codicil already made, or shall attest the execution of any will or codicil, which shall hereafter be made, shall have died in the life time of the testator, or before he or she shall have received or released the legacy or bequest on tender made thereof, such legatee shall be deemed a legal witness to the execution of such will or codicil within the intent of this act, notwithstanding such legacy or bequest.

In case of death of legatee who is witness.

§ 29. No person to whom any beneficial interest, estate, gift or appointment shall be given or made, which is declared null and void by this act, or who shall have refused to receive any such legacy or bequest on tender made, and who shall have been examined as a witness concerning the execution of such will or codicil, shall, after he or she shall have been so examined, demand or receive any profit or benefit of or from any such estate, interest, gift or appointment so given or made to him or her, in and by any such will or codicil ; or demand, receive or accept from any person or persons whatsoever, any such legacy or bequest, or any compensation or satisfaction for the same, in any manner whatever.

Legatee not to take by will in certain cases.

§ 30. When the copy of any will which has been proved and allowed in any probate court in any of the United States, or in any foreign state or kingdom, shall be directed to be filed and recorded in any probate court in this territory, pursuant to this act, the filing and recording thereof shall be of the same force and effect as the filing and recording of an original will, proved and allowed in the same court of probate ; and the said judge may thereupon proceed to take bonds of the executor, or grant administration of the said testator's estate lying in this territory, with the will annexed, and settle said estate in the same way and manner as by law he may or can upon the estates of testators, whose wills have been duly proved before him.

Effect of filing copy of will in probate court, &c.

§ 31. When any testator, in and by his last will and testament, hath given, or shall give, any chattels or real estate to any person or persons, and the same shall be taken in an execution for the payment of the testator's debts, or shall be sold therefor, as the law pro-

When share of legatee taken to pay testator's debts, &c.

vides in such case, all the other legatees, devisees and heirs, shall refund their average or proportionable part of such loss to such person or persons from whom the bequest shall be so taken away, and he or they shall and may maintain a suit or action at law to compel such contribution.

Widow may
waive pro-
vision and
claim dower.

§ 32. The widow, in all cases, may waive the provision made for her in the will of her deceased husband, (when she shall not have been endowed before marriage,) and claim her dower, and have the same assigned her in the same manner as though her husband had died intestate, in which case she shall receive no benefit from such provision, unless it shall appear by the will plainly the testator's intention to be in addition to her dower.

When real
estate
chargeable
with debts.

§ 33. The real estate of the testator or intestate shall stand chargeable with all the debts of the deceased over and above what the personal estate shall be sufficient to pay: and if, after distribution, partition, or assignment of dower, any debts appear, every one to whom any portion has been allotted, shall refund in equitable proportion.

Minor chil-
dren to have
share of es-
tate in cer-
tain cases.

§ 34. Any child or children, being minors at the time of the testator's decease, or their legal representatives, in case of their death, not having a legacy given him, her or them in the will of their father or mother, shall have a proportion of the estate of their parents assigned unto him, her or them, as though such parent had died intestate: *Provided*, such child, children or grand-children have not had an equal proportion of the deceased's estate bestowed on him, her or them, in the deceased's lifetime.

When lineal
descendants
to take an-
cestors de-
vise.

§ 35. When any child, grand-child, or other relation, having a devise of real or personal estate, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estates, real or personal, in the same way and manner such devisee would have done in case he had survived the testator, any law, usage or custom to the contrary notwithstanding.

Estate not
devised, how
distributed.

§ 36. All such estate, real or personal, that is not devised or bequeathed in the last will and testament of any person, hereafter to be proved, shall be distributed in the same manner as if it were an intestate estate, and the executor or administrator shall administer on it as such.

Tenant by
courtesy.

§ 37. When a man and his wife shall be seised of lands, tenements or hereditaments in her right and fee, and issue shall be born alive of her body, that may inherit, or might have inherited the same, and such wife shall die, the husband shall have and hold such estate during his natural life, as tenant by the courtesy.

Estates not
devised, how
to descend
and be dis-
tributed

§ 38. When any person shall die seised of lands, tenements or hereditaments not by him devised, the same shall descend in equal shares to and among his children and such as legally represent them, (if any of them be dead) and in every case where children shall inherit by representation, it shall be in equal shares; and where there are no children of the intestate, the inheritance shall descend equally to the next of kin in equal degree, and those who represent them, computing by the rules of the civil law. No person to be considered a legal representative of collaterals beyond the degree of brother's and sister's children; and for want of heirs the estate shall accrue to the territory.

§ 39. When any of the children of the intestate die before his arrival at the age of twenty-one years, and unmarried, such deceased child's share shall descend equally among the surviving brothers and sisters, and such as legally represent them; but if such deceased child die after having arrived at the age of twenty-one years, unmarried and intestate, in the lifetime of the mother, every brother and sister shall inherit equally with the mother. Persons born of parents not united in matrimony according to law, shall inherit on the part of the mother, and on the part of the father, if the parents afterwards intermarry.

Estates not devised, how to descend and be distributed.

§ 40. Whenever any child shall happen to be born after the death of the father without having any provision made in his will, every such posthumous child shall have right and interest in the estate of his or her father in like manner as if the father had died intestate, and the same shall be assigned to him or her accordingly; and in every such case, the judge of probate shall issue his warrant as in case of intestate estates, to assign to such posthumous child a share in his or her father's estate equal to what he would have inherited if his or her father had died intestate, and the same shall be taken in proportion from the devisees and legatees who own the estate by virtue of such will.

Posthumous child to inherit.

Sale of mortgaged premises by advertisement.

§ 41. All mortgages executed by any person, accompanied by, or containing a power of sale, may be foreclosed by advertisement in the manner prescribed by this act: *Provided*, That some default in the condition of such mortgage shall have occurred, by which the power of sale became operative: *And provided further*, That no suit shall have been commenced for the recovery of the money, or any part thereof, secured by such mortgage, or if commenced shall have been discontinued, or the execution returned unsatisfied, in whole or in part.

Mortgages containing power of sale, how foreclosed.

§ 42. Whenever any person shall be desirous of foreclosing by advertisement, any mortgage, notice shall be given, in which shall be stated the names of the mortgagor and mortgagee, the date of the mortgage, and when recorded, the amount claimed to be due thereon at the date of said notice, and a description of the premises, as contained in the mortgage.

§ 43. Such notice shall be published for twelve successive weeks in a newspaper published in the county in which the premises or some part thereof are situated, and if there be no such paper in the county, then in a newspaper printed at the seat of government, and by fixing a copy thereof on the outward door of the court-house, if there be one in the county; but such sale may be postponed from time to time by giving notice in like manner of such postponement.

Notice of sale, how given.

§ 44. The sale shall be at public auction, in the day time, in the county where the mortgaged premises, or some part thereof are situated, by the person appointed for the purpose in such mortgage deed, or the sheriff, under sheriff, or any deputy sheriff, of the proper county; and if the premises consist of different lots, farms or tracts of land, they may be sold separately and entire, but no more of them shall be sold than shall be necessary to satisfy the amount due on such mortgage, with interest and costs of such sale, allowed by law.

Sale to be at auction, &c.

Officer making sale to give certificate, &c.

What to contain, and where filed.

How mortgagor may redeem.

To retain possession until, &c.

Premises not redeemed, sheriff to give deed.

Notice of sale, how proved.

Affidavit, before whom made, &c.

§ 45. Whenever any lands and tenements shall be sold by virtue of a power of sale contained in any mortgage, it shall be the duty of the officer or other person making the sale, to give to the purchaser or purchasers, a certificate in writing under seal, setting forth a description of the premises sold, the sum paid therefor, and the time when the purchaser or purchasers will be entitled to a deed for the same, unless they shall be redeemed as provided in this act; and such officer shall, within ten days from the time of sale, file in the office where the mortgage is recorded, a duplicate of such certificate, signed by him, and such duplicate certificate, or a copy certified by the register, shall be taken, and deemed evidence of the facts therein contained.

§ 46. It shall be lawful for the mortgagor, his heirs, executors, administrators or assigns, whose lands or tenements shall be sold in conformity to the provisions of this act, within two years from and after such sale, to redeem such lands or tenements by paying to the purchaser or purchasers, his or their executors, administrators or assigns, or to the proper sheriff, under sheriff or deputy sheriff, the sum of money which may have been paid by such purchaser or purchasers, together with interest on such purchase money, at the rate of ten per centum per annum, from the time of such sale; and such payment being made as aforesaid, the said sale and the certificate granted thereon as aforesaid, shall be null and void, any thing in this act to the contrary notwithstanding: and the bail of the said sheriff shall be responsible for the faithful payment to the purchaser aforesaid, of all moneys received by him or any of his deputies, aforesaid: *Provided*, That in every case the mortgagor may retain full possession in trust for the mortgagee, or purchaser of all premises mortgaged by him, until the title shall absolutely vest in the purchaser of such mortgaged premises, according to the provisions of this act.

§ 47. If such mortgaged premises, so sold as aforesaid, shall not be redeemed as aforesaid, it shall be the duty of the officer or other person who shall have sold the same, or his executors or administrators, or some person appointed by the district court for that purpose, to complete such sale, by executing a deed of the premises so sold, to the purchaser or purchasers.

§ 48. In every case where the sale of mortgaged premises, in virtue of a special power for that purpose, contained in the mortgage, shall hereafter take place, an affidavit stating the publishing of the advertisement of sale in a newspaper, made by the printer of the newspaper, or other competent person; and also an affidavit, stating the fixing up a copy of the advertisement upon the outward door of the court house, and made by the person who fixed the same upon said door; and also an affidavit stating the circumstances respecting the sale of the mortgaged premises, and made by the person who acted as auctioneer at the sale, and certified and recorded, or the record of either of the said affidavits, shall be received in every court of law or equity in this territory, prima facie evidence of the facts in such affidavit set forth.

§ 49. The person making either of the said affidavits, shall make the same before a person authorized to take acknowledgments of deeds in the county in which the mortgaged premises shall be; and

such officer is hereby required to take the same affidavit and to subscribe his name to a certificate underneath the same, purporting that the person making the affidavit had appeared before him and made oath or affirmation to the same.

§ 50. In case application shall be made to the register of deeds of any county where the mortgaged premises shall be, to record either of the said affidavits, certified and subscribed as aforesaid, then, and in such case, the said register is hereby required to record in his book of mortgages, the said affidavit at full length, together with the certificate annexed to the same. Register to record affidavit.

§ 51. A record of the affidavit aforesaid, and of the deed executed on the sale of the premises, shall be sufficient to pass the title thereto, and the said conveyance shall be an entire bar of all claim or equity of redemption of the mortgagor, his heirs and representatives, and of all persons claiming under him or them, by virtue of any title subsequent to such mortgage; but no title accruing prior to the execution of such mortgage, shall be affected thereby. Record of affidavit to pass title, &c.

§ 52. Any person to whom a subsequent mortgage may have been executed, shall be entitled to the same privilege of redemption of the mortgaged premises, that the mortgagor might have had, or of satisfying the prior mortgage, and shall by such satisfaction acquire all the benefits to which such prior mortgage was or might have been entitled. Subsequent mortgage may redeem.

§ 53. If on the sale of the mortgaged premises there are other sums due on the same mortgage, or other subsequent mortgages, the surplus arising on such sale shall be retained by the officer or other person conducting such sale, for the satisfaction of such subsequent mortgage money; and if no default shall have happened in the payment of the money secured by such mortgage; or if the same shall have become due, and shall have remained in the hands of such officer uncalled for, for the space of two months after such sale, in either case the same shall be invested by such officer or other person at legal interest, to satisfy any such amount as may thereafter fall due, or to be paid over whenever the same shall be demanded by such mortgagee; but no interest shall be allowed on any mortgage money after the same shall fall due as aforesaid: *Provided*, Sufficient moneys are in the hands of the officer or other person to satisfy the same. Surplus on sale how disposed of.

§ 54. The mortgagee may be a purchaser at any mortgage sale made in virtue of a power of sale contained in the mortgage, and his title shall not, on that account, be impeached or defeated, either at law or equity: *Provided*, The sale was in every other respect conducted in good faith, and the affidavit of the publication and affixing notice of sale, and of the circumstances of such sale shall be evidence of the sale, and of the foreclosure of the equity of redemption, as specified in the forty-eighth section, without any conveyance or certificate from the officer, in the same manner and with like effect as if such conveyance had been made. Mortgagee may purchase at sale.

Of the partition of lands.

§ 55. Where any lands, tenements or hereditaments shall be held in joint tenancy, tenancy in common, or coparcenary, it shall be lawful for one or more of the parties interested therein, to present a Petition for partition of lands, made to district court.

petition to the district court of the county in which the premises are situate, describing in such petition such lands, tenements or hereditaments, and setting forth the rights and titles of all the said parties therein; or in case any one or more of such parties, or the share or quantity of interest of any one or more parties are unknown to the petitioner, setting forth the same in such petition, accompanied by an affidavit that such petitioner is ignorant of the names, rights or titles of such person or persons, as the case may be, and by the said petition praying the court to whom the same shall be directed, that the same premises may be divided, by commissioners to be appointed by the said court, according to the respective rights of the parties therein, and in pursuance of the directions of this act.

Notice and copy of petition when to be served.

§ 56. A copy of such petition shall be served forty days at least, previous to the term at which the same shall be presented, on all the parties concerned in such lands, tenements or hereditaments, who shall not join in the said petition, or on the guardians of such as are minors, together with a notice subscribed by the petitioner and directed to each of the said parties, or their guardians as aforesaid, that an application will be made to the said court on some certain day in term, to be specified therein, or as soon thereafter as counsel can be heard, for the appointment of such commissioners as aforementioned: *Provided*, That if either of the parties to whom such notice shall be directed, shall reside out of this territory, or cannot be found therein, or in case either of the parties interested in the premises shall be unknown to the petitioner, (to be made to appear in either case by affidavit,) then and in every such case, instead of a service of a copy of such petition and notice as aforesaid, on such absent or unknown party or parties, it shall be sufficient for the petitioner to cause a copy of such petition and notice to be previously published, for the space of three months, once in every week, in one of the public newspapers printed in the county in which the premises are situate, if any newspaper shall be published in said county, and in case there be no newspaper published in said county, it shall be sufficient that it be published in a newspaper printed at the seat of government, which publication shall be deemed a sufficient notice to such parties, though the names of some or all of them shall not have been mentioned therein; but nothing in this proviso shall prevent the personal service of a copy of the said petition and notice, on any party out of this territory, but such service shall be deemed sufficient as to the parties upon whom the same shall have been made, without any publication thereof as aforesaid.

Notice when parties reside out of territory.

Parties to appear and answer petition, &c.

§ 57. On presenting such petition, and proof being made by affidavit, to the satisfaction of said court, that copies of such petition and notice have been duly served or published as aforesaid, the said court shall by rule order the parties interested in the premises who are known, to appear and answer the said petition within the usual time allowed for pleading in said court, and shall also by rule, order such of the parties as are unknown, or whose share or interest is unknown, to appear and show titles to the proportions which they may claim of the premises, set forth in the said petition, and to answer the said petition within the like time allowed for pleading as aforesaid; and such parties as are known, or any of them may within such time, or within such further time as the court may allow for

the purpose, appear and answer the said petition, and such of the parties as were unknown at the time of presenting the petition, may within the time aforesaid-allowed, appear and show title as aforesaid, and answer and plead to the said petition, as to a declaration; and thereafter the proceedings shall in all respects be conformable to this act, as if all the parties had been originally named in such petition, and such further pleadings may be thereupon had between the parties respectively, according to the rules and practice of said court, as in other actions or suits depending therein, until an issue or issues in law or in fact be joined between the said parties respectively, or some of them, and such of the parties as shall answer the said petition, may plead thereto, non tenent insimul, and give any special matter in evidence under the said plea, which might otherwise be pleaded, giving notice with the said plea, of the several matters so intended to be given in evidence; and all such issues shall be tried, and the like proceedings for the trial thereof shall be had as in other actions in the said court; and the said court shall have power to award new trials as in other cases; and after the final determination of all such issues, the said court shall ascertain and determine the respective rights of the parties in such lands, tenements or hereditaments, and give judgment that partition thereof be made according thereto, or between such of them as shall have any right therein; and if it shall not appear to the court after the trial of any issues, or after judgment by default, confession or otherwise, against such of the parties as are known what part or interest any parties whether known or unknown to the said court, and who shall not have appeared or pleaded in the said cause, have in the premises, then it shall be lawful for the court to give judgment, that partition be made so far as the rights or interests of the parties who are known, have been ascertained; and the residue of the said premises shall remain, for the parties so unknown, subject to be divided between them, upon application to the said court, or otherwise, according to this act, or by consent of such parties at any future time: and after judgment as aforesaid, either on verdict, fault, confession, or otherwise, the court shall by rule appoint three reputable freeholders, commissioners to make the said partition, quality and quantity considered, according to [the] respective rights and interests of the parties, to be adjudged as aforesaid; and in case there shall be any owners, who or whose interest shall be unknown, the court shall designate and describe the part or portion to remain for such owners: *Provided*, That such partition shall not preclude any person not named therein, and who shall claim any right or title to the premises in question, from controverting the right or interest of the parties between whom such partition shall have been made.

What may
be pleaded.

Court to give
judgment.

To appoint
commissioners
etc.

Partition no
to preclude
claims.

§ 58. The commissioners to be appointed as aforesaid, shall, before they proceed to make such partition, be severally sworn or affirmed, (as the case may be) before an officer, honestly and impartially to execute the trusts reposed in them as commissioners for making partition of the lands, tenements or hereditaments, as directed by the said court, which oath or affirmation shall be taken and subscribed by the said commissioners, and filed in the office of the clerk of the said court, at or before the time of making the return by them of such partition as hereinafter mentioned; and the said com-

Commis-
sioners to be
sworn and
oath recor-
ded.

To make
partition and
return.

missioners, or any two of them, shall forthwith proceed to make partition according to the judgment of the court, and a return thereof being made in writing by them, or any two of them, under their hands and seals, to the said court, and specifying therein the manner of executing their said trust, and describing the land divided and the shares allotted, as shall be directed by the judgment of the court; and the same being proved or acknowledged before any judge or justice of the said court, or before some officer authorized to take the proof and acknowledgment of deeds and conveyances by law, and such return being confirmed, judgment shall thereupon be given, that such partition be firm and effectual forever; and such judgment shall be binding and conclusive on all parties named therein, and their legal representatives, and also on all such parties interested as are not known, to whom notice shall have been given by publication as aforesaid, and their legal representatives, except as is declared in the preceding section: *Provided*, That it shall be lawful for the court, on good cause shown, to set aside the return of the said commissioners, and to appoint, as often as may be necessary, new commissioners, who shall in all things proceed as the other commissioners are herein directed to proceed, and the judgment thereupon to be given shall be of like effect, as if judgment had been rendered upon the first return.

Court may
set aside re-
turn.

Court may
order com-
missioners
to sell in cer-
tain cases.

§ 59. If it shall appear by the return of the said commissioners, or any of them, to the said court, that the lands, tenements or hereditaments in question, are so circumstanced that a partition thereof cannot be made without great prejudice to the owners of the same, then it shall be lawful for the court to order the said commissioners to sell the premises in question, at public auction, to the highest bidder or bidders, after giving such public notice of the time and place of such sale as the said court may deem reasonable, and shall direct; and the said commissioners, or any two of them, having reported their proceedings in writing under their hands to the said court, and the court approving thereof, shall give judgment that the sale be valid and effectual in law, and shall, by rule, direct the said commissioners, or any two of them, to execute good and sufficient conveyances in law, to purchaser or purchasers, which conveyances shall be a bar, both at law and in equity, against all the owners named in the said proceedings, and against such as are not named, and who have had notice given them by publication in the public papers, in the manner directed by this act, and all others claiming by, from or under them.

Collection
and payment
of costs and
charges.

§ 60. When all the parties interested in any proceedings under this act, shall have been known and named therein, the costs and charges attending such proceeding shall be paid by the petitioner presenting the same; and the said court on every final judgment to be rendered as aforesaid, for partition of such lands, tenements or hereditaments, upon a sale thereof, or for the partition of part, and upon a sale of the residue thereof, shall also adjudge each of the parties concerned therein, other than the said petitioners, to pay to the said petitioners a proportion of the said costs, according to their respective rights therein, which costs shall be taxed as in other cases, for the like or similar services, and may be levied by execution against the person, goods, chattels, lands and tenements of the respective

parties who shall be adjudged to pay the same, as in other cases where the costs are to be recovered; and in case of any such sale, the court may order the same to be paid or retained out of the moneys arising from such sale, and due to the parties who ought to pay the same; but where any one or more of the parties interested shall have been unknown, and not named in the same, the court shall adjudge such of the parties as are known and named, to pay to the petitioner their proportions of the costs respectively, according to their respective rights therein, to be taxed, recovered and paid in manner aforesaid directed; and as to such of the parties as are not known or named, judgment shall be rendered that the residue of the costs which shall not have been adjudged against the owners who are named in manner aforesaid, shall be levied and collected (if no sale has been made) out of the proportion of the premises remaining undivided for such unknown parties, and for which residue, execution may issue against such proportion of the premises, and the same may be seized in execution, and so much thereof as shall be necessary to pay [the] aforesaid residue of the said costs, together with the sheriff's fees and other charges thereon, may be sold and conveyed on such execution, in like manner as if the same had been a writ of fieri facias issuing out of the same court, in a personal action against the owner or owners of such premises; and such sale and conveyance shall be equally valid and effectual, as if the owner or owners of the said premises so sold, had been known and named in the said proceedings, and the execution issued thereon aforesaid.

§ 61. Where there shall be any owners interested, who are not known or named in the proceedings under this act, then and in that case, the commissioners, in case of a sale of the premises, shall bring the moneys arising therefrom into court, and after deducting the costs and expenses adjudged according to the several proportions set forth in such judgment, it shall be lawful for the court to direct the moneys adjudged to such unknown owners, to be placed at interest, and secured for their benefit until claimed; and the residue of the moneys brought into court, shall be distributed among the owners that are named, in the proportions adjudged to them respectively: the court may, in its discretion, require of all or any of the said owners, before they shall be permitted to take out of court any moneys arising from any such sale, to give security, to the satisfaction of the said court, to refund such money, with interest thereon, in case it shall at any time hereafter appear that they were not entitled thereto: *And further,* When all the parties interested shall have been known and named in the proceedings under this act, the moneys arising from every such sale shall be ordered, by the said court, to be paid by the said commissioners to the said parties, the [their] guardians or legal representatives, in proportion to their respective rights in the lands, tenements and hereditaments, so sold, deducting from their respective shares the costs and charges which may be ordered to be retained out of the same, as aforesaid; and if any of the said parties shall be absent from this territory without such legal representative, the proportion of the said moneys due to every such party shall be put out to interest, on sufficient security on real property, by order and under the direction and control of the said court, for the benefit of such party.

Court may order certain moneys put out at interest.

Residue, how distributed.

Security required.

Commissioners to pay parties.

Court to appoint guardians for minors.

§ 62. It shall be lawful for the said court, for any of the purposes intended by this act, and before or after the commencement of any proceeding by virtue thereof, to appoint guardians for such of the parties as may be minors, whether such minors shall reside within or out of this territory; and the court, on appointing any guardians as aforesaid, shall, for the benefit of such minors, take sufficient security of every such guardian, by bond, conditioned for the faithful discharge of the trust committed to such guardian, and to render just and true account of such guardianship, in all courts and places when thereunto required, which bond or bonds shall be filed in the clerk's office of said court; and the guardians of all minors so to be appointed, shall be, and hereby are, respectively authorized and empowered, in behalf of the respective minors whose guardians they shall be, to do and perform every act respecting the proceedings for the partition of any lands, tenements or hereditaments under this act, or any matter or thing relating thereto, which shall be binding on such minors, and be deemed as valid, to every purpose, as if the same had been done by such minors, after having arrived at full age.

Their powers.

Compensation of commissioners.

§ 63. The commissioners so appointed, shall be allowed such sum for their services and expenses as the said court shall direct, and which shall be paid by the said petitioners, and shall be allowed as part of the costs to be taxed as aforesaid.

Joint tenants, &c. to have remedy by this act.

§ 64. All joint tenants, and tenants in common, who hold jointly or in common, for years, or for life or lives, and all joint tenants, or tenants in common, where one or more of them have estates for years, or for life or lives, with the other who have estates of inheritance or in fee, and each of them, shall have, in every such case, the like remedy for the partition of any lands, tenements or hereditaments so possessed, or held by them in joint tenancy, or tenancy in common, and in all respects subject to the like proceedings and regulations as are provided by this act.

Writ of error may be brought.

§ 65. On all final judgments to be given in any of the said courts, upon any such partition being made, or upon the sale of the whole or part of the premises mentioned in any petition presented by virtue of this act, or upon any such sale of part, and partition of the residue thereof, it shall be lawful for any of the parties to said judgment, to bring a writ or writs of error thereon, within the same time, and under the like restrictions and regulations, as in other cases.

Act not to revive claim barred by statute.

§ 66. Nothing in this act contained shall be construed in any manner to authorize the revival or prosecution of any claim to land which might otherwise be barred by the statute of limitations, or by the acquiescence of any party having such claim, or to aid the prosecution of any claim that may not be so barred, but every such claim shall be and remain in the same situation as if this act had not passed.

When partition or sale binding on persons entitled to reversion.

§ 67. Whenever partition shall be made in the court aforesaid, sitting as a court of chancery in this territory, or a sale shall take place by virtue of this act, and either of the parties, plaintiff or defendant to such partition, shall have a freehold estate in the premises, as tenants by courtesy or in dower, or as other tenant for life, whether such life estate be created by act and operation of law, or by devise, grant or otherwise; and the person entitled to the reversion, remainder, or inheritance, after the termination of the particular estate, is

unknown or uncertain at the time of presenting the petition under this act, or of commencing proceeding in said court, sitting as a court of chancery, or before partition or sale be made, so that they cannot be made parties thereto, either by reason that the heir at law of the party last seised of the inheritance shall be contingent or uncertain, or that the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be a contingent remainder, then, and in every such case, the partition or sale shall be binding on such person or persons as would have become entitled to such reversion, remainder or inheritance, upon the termination of the particular estate, as fully, absolutely and effectually, as if such person had been known and named in such proceedings: *Provided*, That notice shall have been given or published to such unknown or uncertain tenant in reversion or remainder, or owner of the inheritance, in the manner prescribed in and by this act; and such person shall be entitled to be made a party, and to all and singular the other benefits and privileges of pleading and trial, as is allowed by this act to unknown owners; and it shall be lawful for the court before whom such petition is pending, to admit any person who, by any contingency contained in any devise or grant or otherwise, may thereafter be entitled to any beneficial interest in the premises, to come and defend the same: *And further*, In case a sale be made under this act, the court before whom such proceedings shall be had, shall take order for securing a proportion of moneys, which the person who would have been entitled to the inheritance upon the termination of such particular estate, would justly be entitled to.

Court may admit person entitled to interest.

§ 68. The interest and estate of every such tenant by courtesy, or in dower, or other tenant for life, who shall be made a party to the proceedings in any such partition, shall pass by a sale of the premises, ordered by virtue of this act, and thereupon such tenant shall be entitled to the interest or income of a just proportion of the purchase money, for life, to be ascertained and adjudged by the said court, and the court shall take order for securing the same to him, her or them, accordingly; and, in case of sale or partition under this act, and before judgment therein given, the court shall examine and ascertain the rights, titles and interests of the parties, plaintiffs and defendants to such proceedings, that the purchaser under such sale may be protected in his title acquired thereby.

Interest of tenant by courtesy, &c to pass by sale.

Proportion paid him.

§ 69. The court, sitting as a court of chancery, in cases of partition pending therein, may decree a sale of the premises in such cases as the courts of law are authorized by this act, or where the ends of justice shall require it; and the said court, sitting as a court of chancery, in any case where it shall decree a partition to be made, if the same cannot be made equal between parties, without prejudice to their rights and interests, may decree a compensation to be made by one party to another, for equality of partition, according to the nature and equity of the case.

Court of chancery may decree sale.

Compensation by parties.

§ 70. All sales and partitions, made under and in virtue of proceedings had in said courts, sitting as courts of chancery, shall be firm and effectual forever; and the final decree of the said court, for or upon the partition or sale of any lands, tenements, hereditaments, or premises whatever, mentioned in any bill or petition presented according to law, and the course and practice of the said court, or for

Sales, &c. under decree of chancery to be effectual.

Proviso.

Party may
appeal.

Proceedings
not to abate
by death.

Powers of
judges not
affected by
this act.

Grantees,
&c. of land
to have same
power as
grantors, &c.

or upon sale of part and partition of the residue thereof, shall be binding and conclusive upon all parties named in the said bill or petition, and their legal representatives; and also on all such parties interested, who or whose interest may be unknown, and their legal representatives, as absolutely and effectually, to all intents and purposes, as if such sales, partitions, and proceedings had been made, and taken place under this act, in a court of law, and judgment had been thereupon given in manner as herein aforesaid: *Provided*, That in case any one or more of the parties interested in the premises, or the estate, or quantity of interest of any, or either of the owners are unknown to the complainant or petitioner, suitable allegations and charges to that effect shall be inserted in the bill or petition, and an affidavit of the truth of such allegations, made by one of the parties, and annexed to, and filed with the said bill or petition, and an order of the said court, published for three calendar months, once at least in every week, in a newspaper printed in the county in which the premises are situate, [or] in case there be no newspaper printed in said county, then in a newspaper printed at the seat of government, containing therein a sufficient description of the premises whereof partition is sought, and requiring all parties interested in the same to appear and answer the bill or petition, by a day in the said order specified, and the publication of which order shall authorize a decree or order of said court, for taking the said bill or petition pro confesso, against all such unknown parties as shall not appear by the day mentioned in the said order, or on such further day as the said court shall appoint; and all such as may appear shall be entitled to be made parties to the suit, and the said bill or petition shall be amended accordingly: *And provided further*, That it shall be lawful for any party to such decree, or any party interested in the premises, though not named in the pleadings, to appeal from the said decree, or from any decree or order of the said court in the case, within the same time, and under the like restrictions and regulations as in other cases.

§ 71. If any of the parties in any suit for the partition of lands, now pending, or hereafter to be commenced, shall die, the proceedings in such case shall not be thereby abated, but such suit may be continued, on suggestion of the death of such party as may die, in case the interest may survive, to the survivor or survivors, and in other cases such suit shall and may be revived by or against the heirs or devisees of such deceased party, in such manner, and by such proceedings, as the court in which such suit is or shall be depending, may from time to time direct.

§ 72. Nothing in this act contained shall be construed to affect the powers of judges of probate, to cause partitions to be made agreeably to such laws as are or may be in force, defining the powers and duties of judges of probate, but partition in such cases shall be made as though this act had not passed.

Miscellaneous provisions.

§ 73. All and every person and persons, bodies politic and corporate, being grantees or assignees of any lands, tenements or hereditaments let to lease, or of the reversion thereof, from any person or persons, and the heirs, executors, administrators, successors and

assigns, of such grantees or assignees, shall have and enjoy the like advantages against the lessees, their executors, administrators and assigns, by entry for the non-payment for rent, or for doing of waste or other forfeiture; and also may have and enjoy the same advantage, benefit and remedies, by action, for not performing other conditions, covenants and agreements, contained and expressed in their leases, [leases] demises or grants, against all the said lessees, termors and grantees, their executors, administrators and assigns, as the lessors and grantors, or their heirs or successors, might have had and enjoyed at any time, in like manner as if the reversion of such lands, tenements and hereditaments, had remained and continued in the same lessors or grantors, or in their heirs or successors.

§ 74. All termors, lessees and grantees of lands, tenements, rents, or other hereditaments, for term of years, or for lives, their executors, administrators and assigns, may have like action, advantage and remedy, against every person and persons, and bodies politic and corporate, their heirs, successors and assigns, who have any gift or grant of the United States, or of any person or persons, of the reversion of the same lands, tenements, rents or hereditaments, so letten, or any part or parcel thereof, for any condition, covenant or agreement, contained or expressed in their grant, lease or leases, as the same grantees, lessees, or any of them, might have had against their grantors and lessors, their heirs, successors and assigns, all benefits and advantages of recoveries in value, by reason of any warranty, in deed or in law, by voucher or otherwise only excepted.

§ 75. The receiver's receipt or certificate of purchase of public lands, signed by the receiver, shall be evidence in any court in this territory, that the title to the lands mentioned or described in said receipt or certificate, is in the person or persons named therein, his, her or their heirs or assigns: *Provided always*, That no receipt or certificate from any receiver shall entitle the holder or holders thereof, his, her or their heirs or assigns, to have or maintain any action in law or equity, for any lands held, owned or occupied, by any person or persons, as mineral ground, at the time of said entry, and on which discoveries of lead or copper ore shall have been made.

Termors, &c. may have same remedy as grantees, &c.

Receiver's receipt evidence of title in certain cases.

AN ACT to amend an act entitled "An act in relation to the evidences of title to lands in the territory of Wisconsin."

§ 1. That the receivers receipt or certificate of the purchase of public lands, signed by the receiver, shall be evidence in any court in this territory that the title to the lands mentioned or described in the said receipt or certificate is in the person or persons named therein, his, her or their heirs or assigns: *Provided always*, That no receipt or certificate from any receiver shall entitle the holder or holders thereof his, her or their heirs or assigns, to have or maintain any action in law or equity, for any lands held, owned or occupied by any person or persons as mineral ground at the time of said entry, and on which discoveries of lead or copper ore shall have been made.

Receiver's receipt evidence of title, except, &c.

§ 2. That all laws and parts of laws contravening the provisions of this act are hereby repealed.

AN ACT concerning the supreme and district courts.

Supreme
court to
have appel-
late jurisdic-
tion.

§ 1. The supreme court of the territory shall have and exercise an appellate jurisdiction only, which shall extend to all matters of appeal, error or complaint from the decisions, judgments or decrees of any of the district courts in all matters of law or equity, and shall also extend to all questions of law which may arise in the said district courts upon motion for a new trial in arrest of judgment, or in cases reversed by the said courts.

Power of
court to is-
sue process.

§ 2. The supreme court shall have power to issue writs of mandamus, quo-warranto, prohibition, error, supersedeas, procedendo, certiorari, scire facias, and all other writs and process not specially provided for by statute, which may be necessary to enforce the due administration of right and justice throughout the territory, but no writ of error shall operate as a supersedeas, unless granted by order of the court upon motion, or by a judge in vacation, upon inspection of the record or a certified copy thereof.

Power of
court to en-
force its de-
crees.

§ 3. The supreme court shall be vested with all power and authority necessary for carrying into complete execution all its judgments, decrees and determinations in the matters aforesaid, and for the exercise of its jurisdiction as the supreme judicial tribunal of the territory, agreeably to the usages and principles of law; and any judge of said court in vacation shall, on good cause shown, have power to allow writs of error, supersedeas and certiorari, as before provided for, and also to grant writs of injunction.

Court when
to stand ad-
jourmed, &c.

§ 4. If two of the judges of the said court shall not attend on the first day of the term, the clerk shall enter such fact on record, and the court shall stand adjourned until the succeeding day, and so from day to day for six days; and if the court shall not be opened within six days all matters pending in said court shall stand continued of course until the next term, and no action or matter shall abate or be discontinued.

Decision of
court to be
in writing.

§ 5. The said court shall give their decision on all cases in writing, which shall be filed with the other papers of the case, and the said court shall appoint some attorney to minute down and make report of all the principal matters in the cases, with the decision of the court.

Power of dis-
trict courts.

§ 6. The district courts shall have original jurisdiction within their respective districts in all civil actions at law or in equity, and appellate jurisdiction in all cases in their several districts from the probate courts, and the decisions of justices of the peace, and the judges of said courts shall be conservators of the peace; and the said courts in term time, and the judges thereof in vacation, shall have power to award throughout the territory, returnable in the proper county, writs of injunction, ne-exeat, and all other writs and process which may be necessary to the due execution of the powers with which they are vested; and the said courts shall respectively have power and authority to hear and determine all cases of crimes and misdemeanors of whatever kind, not cognizable by a justice of the peace, which may be committed within any county or place within their respective districts.

Judges to
make rules
and regula-
tions.

§ 7. The judges of the supreme court, and the judges of the several district courts, may make and record all such rules and regula-

tions respecting the trial and conducting of business, both in term and vacation, as the discretion of the said court and judges shall dictate, not contravening the laws of the United States or of this territory; and in order that the rules of practice and proceedings of the district courts may be uniform, and as near as may be conformable to the rules of the supreme court, the clerk of said court shall from time to time transmit copies of the rules to the clerks of the district courts, and the judges of said courts shall from time to time make rules agreeably thereto, as near as may be, for the practice of their courts respectively.

§ 8. The supreme court shall be held at the seat of government of the territory, on the first Monday of July in every year. Supreme court, where held.

§ 9. The sittings of every court within this territory shall be public, and every person may freely attend the same. Sittings to be public.

§ 10. No judge of any court can sit as such in any cause to which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of consanguinity or affinity to either of the parties; nor can any judge decide or take part in the decision of any question which shall have been argued in the court when he was not present and sitting therein as a judge. Judge not to sit when interested.

§ 11. No judge can practise or act as a counsellor, solicitor or attorney in the court of which he is a judge, except in those suits in which he shall be a party, or in the subject matter of which he shall be interested. Not to practise as attorney.

§ 12. No judge shall have any partner practising in the court of which he is a judge, nor shall any judge be directly or indirectly interested in the costs of any suit that shall be brought in the court of which he is judge, except those suits in which he shall be a party, or be interested as above provided. Not to have partner practising.

§ 13. No judge of any court of record shall hold any other office under the laws of this territory while acting as such judge. Not to hold other office.

§ 14. No judge of any court of record shall demand or receive any pay for any legal or judicial services except his salary. Not to receive fees.

§ 15. No court shall be opened or transact any business on Sunday, unless it be for the purpose of receiving a verdict or discharging a jury; and every adjournment of a court on Saturday to another day shall always be to some other day than Sunday, except such adjournment as may be made after a cause has been committed to a jury. But this section shall not prevent the exercise of the jurisdiction of any single magistrate, when it shall be necessary in criminal cases to preserve the peace or to arrest offenders. Court not to be opened on Sunday, except, &c.

§ 16. No process, proceeding or writ, civil or criminal, before any of the said courts, shall be discontinued by the occurrence of any vacancy in the office of any judge or of all the judges of such court, nor by the issuing of any new commission to any judge or judges of any such court, but the persons appointed in such new commission shall have power to continue, hear and determine such process, proceeding or suit, as their predecessors might have done if no new commission had been issued. Process, &c. not discontinued by vacancy of judge.

§ 17. In cases where a stated term of any court shall not have been held, process issued therefrom may be tested on the first day of the term when such court shall have been held. Process how tested when term not held.

In case of
adjourn-
ment.

§ 18. The adjournment of any court before the expiration of its term shall not affect the teste, return or service of any writs issued prior or subsequent to such adjournment.

Court may
punish for
contempts.

§ 19. Every court of record shall have power to punish as for a criminal contempt, persons guilty of either of the following acts, and no others.

In what
cases.

1. Disorderly, contemptuous or insolent behavior, committed during its sitting in [its] immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

2. Any breach of the peace, noise or other disturbance, directly tending to interrupt its proceedings.

3. Wilful disobedience of any process or order lawfully issued or made by it.

4. Resistance wilfully offered by any person to the lawful order or process of the court.

5. The contumacious and unlawful refusal of any person to be sworn as a witness, and when so sworn the like refusal to answer any legal and proper interrogatory.

6. The publication of a false or grossly inaccurate report of its proceedings; but no court can punish as a contempt the publication of true, full and fair reports of any trial, argument, proceedings or decisions had in such court.

How con-
tempts pun-
ished.

§ 20. Punishment for contempts may be by fine, or by imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court, but the fine shall in no case exceed the sum of two hundred and fifty dollars, nor the imprisonment thirty days; and when any person shall be committed to prison for the non-payment of any such fine, he shall be discharged at the expiration of thirty days.

Ib.

§ 21. Contempts committed in the immediate view and presence of the court may be punished summarily; in other cases the party charged shall be notified of the accusation, and have a reasonable time to make his defence.

Ib.

§ 22. Whenever any person shall be committed for any contempt specified in this act, the particular circumstances of his offence shall be set forth in the order or warrant of commitment.

Offence to
be stated in
warrant.

§ 23. Nothing contained in the preceding sections shall be construed to extend to any proceedings against parties or officers as for a contempt, for the purpose of enforcing any civil right or remedy.

Persons also
liable to in-
dictment.

§ 24. Persons punished for contempt under the preceding provisions, shall notwithstanding, be liable to indictment for such contempt, if the same be an indictable offence, but the court before which a conviction shall be had on such indictment shall, in forming its sentence, take into consideration the punishment before inflicted.

AN ACT to amend the act entitled "An act concerning the supreme and district courts, and defining their jurisdiction and powers."

Process, how
tested.

§ 1. That all process issued from any of the district courts of this territory may be tested in the name of the presiding judge of said

district court, or in the name of any one of the judges of the supreme court of said territory.

AN ACT relating to the judicial districts.

§ 1. That the counties of Crawford, Grant and Iowa, shall constitute the first judicial district of this territory; that the counties of Walworth, Rock, Green and Dane, the second; and the counties of Brown, Milwaukie and Racine, the third. Territory divided into districts.

§ 2. That Charles Dunn shall be district judge in the first judicial district, David Irvin in the second, and Andrew G. Miller in the third. Judges assigned to districts.

§ 3. That in case the office of judge in either of said districts should become vacant by death, resignation or otherwise, or the judge thereof shall be unable, from sickness or other cause, to hold the terms in the district to which he is assigned, the governor is hereby authorized, in his discretion, to assign either of the other judges to hold such terms as are provided for in this act: *Provided*, They do not interfere with the terms of the district to which any of said judges are assigned by this act, until the vacancy is filled, or disability removed; and the person who may be appointed to fill such vacancy by the president of the United States, is hereby assigned to said vacant district. Proceedings when office becomes vacant.

§ 4. That the district court shall be held at the county seats of the different counties every year at the times herein specified, and no other, to wit: Times of holding courts.

Iowa county on the second Monday of April, and the first Monday of September.

Grant on the fourth Monday of March, and the fourth Monday of September.

Crawford on the first Monday of May, and the second Monday of October.

Dane, when it shall be organized, on the first Monday in April, and the first [Monday] of October.

Green on the second Monday of April, and the second [Monday] of October.

Rock on the third Monday of April, and the third Monday of October.

Walworth on the fourth Monday of April, and the fourth Monday of October.

Racine on the first Monday of July, and third Monday of November.

Milwaukie on the second Monday of June, and first Monday of November.

Brown on the fourth Monday of May, and second Monday of October.

§ 5. That all writs, process, indictments, recognizances and other proceedings in the district courts in the several counties shall stand continued in each county, until the first term of the district court held in said county under this act, the same as if they had been regularly continued in court. Proceedings when to stand continued.

§ 6. The judge of any district is hereby authorized to hold adjourned terms, or to appoint special terms in any county in his dis- Judges when to hold adjourned or

special
terms.

strict for the trial of criminal cases, giving thirty days' previous notice thereof, by advertisement to be published in a newspaper printed in the county, if there be one, and by posting a notice thereof on the door of the usual place for holding courts in the county in which such terms are to be held.

AN ACT concerning proceedings of courts of record.

When place
of holding
court may be
changed.

§ 1. Whenever the court-house or place of holding courts in any county of this territory shall be destroyed by fire or other means, or shall from any cause be unsafe, inconvenient or unfit for the holding of any court, and whenever no court-house shall have been built in any county, the judge of the district court of such county may appoint some convenient building in the vicinity of the place where the court is required to be held by law, as a temporary place for holding such court.

Place ap-
pointed
deemed
court-house.

§ 2. The place so appointed shall be deemed the court-house of the county for the time being; and all business which shall be transacted at such place, shall be as valid as if the same were done at the court-house duly provided by the county.

Court ad-
journd to
another
place.

§ 3. If at any time during any session or term of the aforesaid courts, or either of them, it shall be deemed by the said court improper or inexpedient, by reason of war, pestilence or other public calamity, or the danger thereof, that the said term or session should be continued at the place where the same is then holding, the said court may by order entered in their minutes, adjourn the session of said court to be holden at such other times and places as they may direct, and the said adjourned session shall be taken as a part and continuance of said term, and all proceedings in the said court may be continued at said adjourned times and places, and be of the force and effect as if said court had continued its session at the place it was holden before said adjournment.

Authority of
attorney to
appear.

§ 4. It shall not be necessary to file any warrant of attorney, to authorize any attorney to appear in any court for either party to an action brought therein, except in cases where it shall be specially required by law; nor shall any entry of a warrant of attorney in any judgment record, or other proceeding be necessary, but the plaintiff in his declaration, and the defendant in his plea, shall state the name of the attorney by whom they respectively appear.

Process.

§ 5. All writs and process shall be in the name of the United States.

How tested.

§ 6. All writs and process issuing from the supreme or either of the district courts, may be tested in the name of any one of the judges of the supreme courts.

To be sealed;
when re-
turnable.

§ 7. All writs and process issuing from the supreme or either of the district courts, shall be sealed with the seal of the court, dated on the day they issued, signed by the clerk, and made returnable on the first day of the next succeeding term, unless otherwise provided by law, or directed by the judge.

Seal.

§ 8. The impression of the seal of any court by stamp, shall be a sufficient sealing in all cases where sealing is required.

Process to
be in English
language.

§ 9. All writs, process, proceedings and records in any court within this territory, shall be in the English language, (except that the

proper and known names of process, and technical words may be expressed in the language heretofore and now commonly used,) and shall be made out on paper or parchment, in a fair legible character in words at length, and not abbreviated; but such abbreviations as are now commonly used in the English language, may be used, and numbers may be expressed by Arabic figures, or Roman numerals in the customary manner.

§ 10. All writs and process issued out of any court of record, shall, before the delivery of the same to any officer to be executed, be subscribed or endorsed with the name of the attorney, solicitor or other person by whom the same shall have been issued. How endorsed, &c.

§ 11. Every person of full age and sound mind may appear by attorney or solicitor, as the case may require, in every action or plea, by or against him, in any court, or may at his election prosecute or defend such action or plea in person. But this provision shall not extend to proceedings in criminal cases, nor shall any person be permitted to appear on the record in any civil cause, in person, whilst he has an attorney or solicitor in such cause. Who may appear by attorney.

§ 12. No person shall be sued in the district court in any other than the county in which he resides, or in which he may be found: *Provided*, That nothing herein contained shall prohibit the issuing of an alias, if the defendant upon a *capias* cannot be found within the county in which he is a resident. Person not to be sued out of county.

§ 13. When there are two or more defendants, the action so far as it depends on the place of their residence, may be brought in the county where either of them lives. When defendants in different counties.

§ 14. Actions brought for the recovery of any debt or damages only where bail is required, except where attachment and replevin are allowed, shall be commenced by the issuing and service of a *capias ad respondendum*. Where bail is not required, except where attachments and replevin are allowed, either, Capias ad respondendum when issued.

1st. By summons; or,

2nd. By filing in the office of the clerk of the court of the proper county a declaration, entering a rule in the minutes kept by such clerk, requiring the defendant to plead to such declaration within twenty days after service of a copy of such declaration and notice of such rule, and serving a copy of such declaration and notice of such rule personally on the defendant, which service may be made by the attorney of record, or by any officer competent to serve process in the district courts of this territory. By summons. Suit commenced by declaration.

§ 15. Whenever a suit is commenced by a declaration, such declaration shall be considered the first process in the cause; and whenever the word process occurs in the statutes of this territory, it may include and have reference to such declaration. Declaration considered "process."

§ 16. Upon due proof of the service of a declaration personally on all the defendants in the cause, their appearance shall be entered by the clerk of the court, and their default may be entered for not pleading, and the same proceedings may be had against them in all respects as if they had appeared. When suit commenced by declaration.

§ 17. When a copy of a declaration shall be delivered to any sheriff to be served as provided by law, it shall be the duty of such sheriff to serve the same with all convenient speed, and to return the same with his certificate endorsed thereon, of the time and manner Sheriff to return manner of serving declaration.

of such service, either to the office of the clerk of the court in which such suit may be pending, or to the attorney whose name shall be endorsed on such declaration; and such certificate, signed by such sheriff or his deputy, shall be as effectual to authorize the entry of the defendant's appearance, and default for not pleading, or in actions of ejectment to authorize the entry of a rule to plead, as if the same had been sworn to by such officer; and the return of any declaration delivered to a sheriff, may be enforced by rule and attachment in the same manner as the return of a *capias*.

Suit brought
by fictitious
name.

§ 18. When the name of any defendant is not known to the plaintiff, a suit may be commenced against him by a fictitious name, and it shall not be abated for that cause, but may be amended on such terms as the court shall think reasonable.

Summons,
&c. how
served
against coun-
ty, town, &c.

§ 19. In all suits against the inhabitants of a county, the summons or declaration shall be served by leaving an attested copy thereof with one of the county commissioners, or with one of the officers, who by law exercise the powers of county commissioners; and in all suits against the inhabitants or members of a town, precinct, parish, religious society, or school district, or against the proprietors of common and undivided lands, or general fields, or wharves lying in common, the summons or declaration shall be served by leaving an attested copy thereof with the clerk of the corporation or proprietors, and also leaving another like copy with one of the officers of the town, or one of the assessors or standing committee of the parish, or religious society, or one of the proprietors of such land or other estate, as the case may be; and if there is no such clerk found within the county, the copy of the process so intended for him shall be left with one of the other officers before mentioned, or with one of the said proprietors; and if there are no such officers, the copy of the process so intended for them respectively, shall be left with one of the inhabitants, or members of the corporation.

Personal ac-
tion not to be
brought, &c.

§ 20. No personal actions shall be maintained against any person who is out of the territory at the time of the service of the process, unless he shall have been before that time an inhabitant of the territory, or unless an effectual attachment of his goods, estate or effects [be] made, except in cases in which it is otherwise specially provided.

Process
how served
on absent
defendant.

§ 21. If the defendant is out of the territory at the time of the service of the process, the service thereof shall be made by leaving it at his last and usual place of abode, if there be any within the territory; and if the defendant never was an inhabitant of the territory, the process shall be served by leaving the original or the copy, as the case may be, with his tenant, agent or attorney; and if there shall be no such tenant, agent or attorney within the territory, known to the officer or the plaintiffs, the officer shall certify the facts in his return, and the court may thereupon cause notice to the defendant to be given in such manner as they shall think proper.

How served
on corpora-
tions.

§ 22. In all suits against any corporation other than those mentioned in the twenty-first section of this act, the process shall be served by leaving the original or the copy, as the case may be, with the clerk, cashier, secretary, agent or any other officer having charge of their business; and if there be no such officer found within the county, the process may be served on any member of the corporation.

§ 23. When an action is brought in this territory by any person who is not an inhabitant thereof, or who cannot be found therein, to be served with process, he shall be held to answer to any action brought against him here by the defendant in the first action: *Provided*, That the demand in the two cases be of such a nature that the judgment or execution in the one case can be set off against the judgment or execution in the other.

Action
against per-
son out of
territory.

§ 24. If there are several defendants in the original action, each of them shall be authorized to bring such cross action against the original plaintiff; and upon recovering judgment therein, he may be allowed to set off his judgment against that which may be recovered against himself and his confederates, in like manner as if the latter judgment had been against himself alone.

§ 25. The process in such cross action may be served on the person who appears as the attorney of the plaintiff in the original suit, and such service shall be as valid and effectual as if made on the party himself within this territory.

Process how
served.

§ 26. Where the service of the writ in any civil action is defective or insufficient, by reason of any mistake on the part of the plaintiff or of the officer, as to the place where or the person with whom the process or the copy ought to have been left, the court may in their discretion order a new process or notice to be issued, and served in such manner as they shall direct; and the service so made and returned shall be as effectual as if duly made and returned on the original process.

Proceedings
when ser-
vice of writ
defective.

§ 27. When any defendant being duly served with process, shall fail to appear, his default shall be recorded, and the charge in the declaration shall be taken to be true, and judgment shall be recorded accordingly.

Defendant
not appear-
ing, default-
ed.

§ 28. If after such default at the first term the defendant shall appear before the jury is dismissed, the court may take off the default and allow the appearance to be entered upon the defendant's pleading issuably, and paying the plaintiff's costs up to that time.

Default
when taken
off.

§ 29. No special pleas or special demurrers shall be allowed in any court in this territory. Whenever a defendant shall plead the general issue in an action in which such issue may be pleaded, or whenever he shall plead nul tiel record to an action of debt on judgment, or whenever in an action of covenant he shall, by his plea, deny the execution of the instrument on which the plaintiff may have declared, he may give notice with such plea of any matters which, if heretofore pleaded, would be a bar to such action, and may give such matter in evidence on the trial.

Special
pleas, &c.
abolished,
&c.

§ 30. In every suit brought in a court of record, wherein any written obligation or contract specified in the next section shall be set forth in the declaration as the cause of action; if interlocutory judgment be rendered for the plaintiff by default, or upon demurrer, or upon confession, the court shall direct the clerk thereof to examine, ascertain and report what sum the plaintiff ought to recover for his damages.

Clerk to as-
certain
amount of
damages.

§ 31. The obligations or contracts upon which such assessment may be made, must be in writing, and must be either,

1. A bill of exchange, promissory note, order or draft for the payment of money; or,

2. Some contract for the absolute payment of money only ; or,
3. Some contract for the payment of a sum certain, though payable in specific articles ; or,
4. Some contract for the delivery of specific articles at a value or price stipulated in the same contract.

Effect of filing copy of note, &c.

§ 32. In all actions on promissory notes or bills of exchange, where the plaintiff shall file a copy of such promissory note or bill of exchange with the declaration, the damages may be assessed as though the said note or bill of exchange had been set out specially in said declaration.

When proof not required of execution of note.

§ 33. In assessing such damages the production to the clerk of the bill of exchange, promissory note or contract specially set forth in the declaration, or of which a copy was filed, shall be sufficient evidence of the execution of the same without any other proof; and such assessment shall be made, notwithstanding there may be general or other counts in the declaration besides those in which the note, bill or contract shall be specially set forth.

Clerk to administer oaths, &c.

§ 34. Any clerk authorized to assess damages by the provisions of this act, may administer oaths to witnesses, and take their testimony whenever it may be necessary; if the instrument declared on be lost, the clerk may take proof thereof, and of the contents of such instrument, which proof shall be stated in his report; and whenever required by either party, he shall reduce to writing the testimony taken by him and include the same in his report.

To report amount due.

§ 35. The clerk shall report to the court the sum ascertained by him to be due to the plaintiff, and shall certify under his hand, upon such original bill, note or contract, the amount of damages assessed therein.

Proceedings upon report.

§ 36. Either party may except to such report, and on such exception being made, the court shall hear and examine the matter, and cause justice to be done between the parties; and shall give judgment for the sum reported, or for such sum as the court, upon hearing the exception, if any, shall have ascertained to be due to the plaintiff.

Judgment how entered.

§ 37. The judgment so rendered shall be entered on the record, without stating any reference to the clerk, or any proceedings in consequence thereof, and the damages shall be stated as having been assessed by the court.

Proceedings when party to action, the cause of which survives, dies.

§ 38. In all personal actions, the cause of which does (*not*) by law survive, if there is only one plaintiff, or one defendant, and the sole plaintiff or defendant shall die after the commencement of the action, at any time before final judgment, the action may proceed and be prosecuted by and against the survivor, and the executor or administrator of the deceased party, in the manner provided in this act.

Id.

§ 39. The action, or appeal, may be entered in such cases, if it is not already entered, and the death of the party shall be suggested on the record; and his executor or administrator may at the same term, or within such further time as the court shall allow, appear and take upon himself the prosecution, or defence, of the suit, as the case may be; and it shall be thenceforth conducted in the same manner as if it had been originally commenced by or against the same executor or administrator.

Id.

§ 40. If the executor or administrator does not voluntarily appear, the surviving party may take out a citation, from the court or the jus-

tice of the peace before whom the cause is pending, requiring the executor or administrator to appear, and take upon himself the prosecution or defence of the suit.

§ 41. The citation, if taken out of court in term time, may be made returnable at the same or next succeeding term, as the court shall order, and if taken out in vacation, it shall be returnable at the next term; and if issued by a justice of the peace, it shall be made returnable at such time as he shall direct; and in all cases it shall be served fourteen days at least before the return day.

§ 42. If the executor or administrator shall not appear, on the return of the citation, or within such further time as the court or justice shall allow, he shall be nonsuited or defaulted, and judgment shall be rendered against him, in like manner as if the action had been originally commenced by or against him, in his said capacity, except as provided in the following section.

§ 43. When an executor shall be nonsuited or defaulted, without having taken upon himself the prosecution or defence of the suit, he shall not be personally liable for any costs in the action, but the estate of the deceased, in his hands, shall be liable for the costs, as well as for the debt or damages, if any are recovered.

§ 44. In addition to the actions which survive by the common law, the following shall also survive, that is to say: actions of replevin and trover; actions of trespass, for assault, battery or imprisonment, or for goods taken and carried away; and actions of trespass and trespass on the case, for damage done to real or personal estate.

§ 45. All the said last mentioned actions may be originally commenced and prosecuted by and against executors and administrators; and if commenced by or against the original party, in his life time, they may be prosecuted or defended by or against his executor or administrator.

§ 46. When an action of trespass is commenced or prosecuted against the executors or administrators of the trespasser, the plaintiff shall be entitled to recover only for the value of the goods taken, or for the damage actually sustained, without any vindictive or exemplary damages, or damages for any alleged outrage to the feelings of the injured party.

§ 47. When the executor or administrator of a trustee, carrier, depository or other person, who claimed only a special property in any goods, to hold them for the use and benefit of another, shall recover such goods, or damages for the taking or destruction thereof, in an action of replevin, or trover, or trespass, the goods or money so recovered shall not be considered as assets in his hands, but shall, after deducting the costs and expenses of the suit, be paid over and delivered to the person for whose use and benefit they were so held or claimed by the deceased person.

§ 48. When judgment for a return, in an action of replevin, shall be rendered against an executor or administrator, the goods returned by him shall not be considered as assets in his hands; and if they shall have been included in the inventory, it shall be a sufficient discharge for the executor or administrator to show that they have been returned in pursuance of such judgment.

§ 49. When there are several plaintiffs or defendants in any personal action, the cause of which survives, either by common law or

1b. when party to action dies, &c.

What actions to survive.

By and against whom prosecuted.

Damages, when action against executor of trespasser.

Provision when executor of certain persons recover damages.

When judgment against executor in action of replevin.

Action to proceed against sur-

viving defendant. by the provisions of this act, and any of them shall die before final judgment, the action shall proceed at the suit of the surviving plaintiff, or against the surviving defendant, as the case may be.

Death of all plaintiffs or defendants. § 50. If in such a case all the plaintiffs, or all the defendants, shall die, the action may be prosecuted, or defended, by or against the executor or administrator of the last surviving plaintiff or defendant, respectively, in like manner as if the survivor had been originally the only plaintiff or defendant.

When heir may prosecute. § 51. In all real and mixed actions, if the plaintiff shall die before final judgment, his heir, at the same term when the death is suggested, or within such further time as the court shall allow, may appear and prosecute the suit, in the same manner as if it had been originally commenced by him.

May prosecute jointly. § 52. If there are several plaintiffs in such action, and any of them shall die, before final judgment, the heir of the deceased party shall be admitted, on motion, to prosecute the suit jointly with the survivors, in the same manner as if he had originally joined with them in commencing the suit.

Surviving plaintiff when to prosecute. § 53. If the interest of the deceased party passes to the surviving plaintiffs, or if there is no motion for the admission of another person, as heir, at the time when the death of the deceased party is suggested, or within such further time as the court shall allow, the surviving plaintiffs may prosecute the suit, for so much of the premises in question as may then be claimed by them.

Actions against surviving tenants. § 54. When there are several tenants, in any real or mixed action, and any of them shall die before final judgment, the action may be prosecuted against the surviving tenants, for so much of the premises as they shall hold or claim.

Proceedings on petition for partition of lands. § 55. The same proceedings as are prescribed in the four preceding sections shall be had in all petitions and actions for partition of lands, in case of the death of any of the parties, except as is provided in the following sections.

1b. § 56. If upon the death of either of several plaintiffs, or petitioners in a suit for partition, the interest of the deceased party shall pass to the surviving plaintiffs or petitioners, or to any person who shall be admitted to join them in the suit, it shall be prosecuted accordingly, in the manner before provided respecting real actions; but if the interest of the deceased party shall pass to any person who is not so admitted as a plaintiff or petitioner, such person may, by order of the court, be made a defendant or respondent, and the same proceedings may be had against him as would have been necessary to make him an original defendant or respondent.

1b. § 57. If upon the death of either of several defendants or respondents, the interest of the deceased party shall pass to the surviving defendants or respondents, the suit may proceed against them without any new process, but if the interest of the deceased party shall pass to any other person, that person may be made a defendant or respondent by order of the court, in the manner prescribed in the preceding section.

Husband to prosecute suit begun by wife. § 58. If any action or suit is brought by an unmarried woman either alone or jointly with others, and she shall be married before final judgment, her husband may on his own motion, be admitted as a party to prosecute the suit with her, and with the other plaintiffs, if

there be any, in like manner as if he had originally joined in the suit.

§ 59. If during the pendency of any action or suit either party shall become insane, the action may be prosecuted or defended by his guardian in like manner as if it had been commenced after the appointment of the guardian, or the court may appoint a guardian for the suit, as the case may require.

When a party becomes insane.

§ 60. When an action is brought by or in the name of any public officer, or by any trustee appointed by virtue of any statute, his death or removal shall not abate the writ; but it may be prosecuted by his successor, provided there be a successor, who might have originally commenced and prosecuted the like action.

Suit commenced by public officer, &c.

§ 61. In all the cases mentioned in this act, when any change shall happen in a suit after its commencement, the court may allow such amendments of the declaration, and other pleadings, and such suggestions to be entered on the record, as circumstances may require.

Declaration when amended.

§ 62. When the defendant in any action founded on contract, shall plead in abatement, the non-joinder of any other person, as defendant, the court may at any time before issue joined on such plea, allow the plaintiff, on such terms as they shall prescribe, to amend his declaration, by inserting therein the name of any other person as defendant, and declaring against him jointly with the original defendant.

Amended when non-joinder pleaded.

§ 63. The plaintiff may thereupon take out new process, which shall be served on the defendants according to law.

New process.

§ 64. Upon the return of said new process, every person named therein as a defendant, shall be bound to appear and answer with the other defendants, in the same manner as if they had all been originally made parties in the first process.

Persons to appear.

§ 65. If a legal service cannot be made on any such new defendant, by reason of his absence from the territory, or for other sufficient cause, the action may nevertheless proceed against all the defendants who are duly served with process, in like manner as is provided in this act, when one of several original defendants is not duly served with process.

When process cannot be served on all.

§ 66. Judgment shall be rendered and execution shall issue in every such case for either party, in the same manner as if the original process had been issued against all the defendants.

Judgment how rendered.

§ 67. When any action founded on contract, is brought against several persons, and any of the defendants shall be defaulted, or shall confess the action, the plaintiff may amend his declaration, and take judgment against those defendants, in like manner as if they had been sued alone, and the action may be discontinued against the other defendants, who shall be entitled to cost against the plaintiff, as in case of a nonsuit: *Provided*, That no such discontinuance and amendment shall be allowed without notice to the defendants who have been defaulted, that they may appear and object thereto if they shall see fit.

When part of defendants defaulted.

§ 68. When any action founded on contract is brought against several persons, the plaintiff may be allowed at any time before the cause is argued to the jury, and if there is no such argument at any time before it is committed to the jury by the court to discontinue, as

Plaintiff may discontinue against some, &c.

against any of the defendants upon payment of costs to them, as in case of a nonsuit, and on such other terms as the court shall direct; and the plaintiff may thereupon amend his declaration, and proceed against the other defendants, in like manner, as if the action had been originally brought against them alone, and the defendants against whom the cause has been discontinued, may be thereupon examined as witnesses for either party, if in other respects competent.

Judgment in
action recover
penalty.

§ 69. In all actions brought for breach of the condition of a bond, or to recover a penalty for the non-performance of any covenant, contract or agreement, when it shall appear by verdict, default, confession or otherwise, that the condition is broken, or the penalty forfeited, judgment shall be entered in the common form, for the penal sum, but no execution shall issue thereon, except as is provided in the following sections.

Execution
how to issue.

§ 70. The court shall award an execution in such case for so much of the penal sum as shall then be due and payable, in equity and good conscience for the breach of the condition, or other non-performance of the contract, which sum shall be ascertained and determined by the court, unless either party shall move to have it assessed by the jury, or unless the court shall think proper to have the question so decided, in which cases the sum so due shall be assessed by a jury.

Provisions
for breaches
of contract.

§ 71. If any further sum shall afterwards become due on such bond or other contract, the plaintiff, or his executors or administrators, may have a scire facias on the judgment from the court in which it was so rendered, against the original defendant, or his executors, administrators, heirs, devisees or assigns, as the case may be, suggesting such further breaches of the contract as shall have accrued, and summoning the adverse party to show cause why execution should not be awarded upon the judgment for the damages caused by such further breaches.

It.

§ 72. The sum due on such suit shall be assessed and determined in the same manner as in the original suit, and execution shall be awarded accordingly, and the like proceedings may be reported upon occasion of any further breaches of the same contract, as often as they shall occur, until the whole of the penalty is exhausted.

Actions for
breach to be
brought.

§ 73. Nothing herein contained shall prevent any person from bringing an action for the breach of any covenant or other contract, instead of suing for the penalty by which the performance of the covenant or contract may have been secured.

Tender may
be made.

§ 74. The payment or tender of payment of the whole sum due on any contract, for the payment of money, although made after the money has become due and payable, may be pleaded to an action subsequently brought, in like manner and with the like effect as if such payment or tender had been made at the time prescribed in the contract.

After action
brought.

§ 75. A tender may also be made after an action is brought on such contract of the whole sum due thereon, with the legal costs of suit incurred up to that time; provided, it be made four days at least before the return day of the original process.

To whom
made.

§ 76. The tender last mentioned may be made either to the plaintiff or to his attorney in the suit, and if not accepted, the defendant

may plead it in like manner as if it had been made before the commencement of the action, bringing into court the amount so tendered for costs, as well as for debt or damages.

§ 77. If such tender is accepted, the plaintiff or his attorney shall, at the request of the defendant, sign a certificate or notice thereof to the officer who has the process, and shall deliver it to the defendant; and if any further costs shall be incurred, for any service made by the officer after the tender, and before he receives notice thereof, the defendant shall pay the same to the officer, or the tender shall be invalid.

When tender made after action commenced.

§ 78. If the defendant in any action for slander or for publishing a libel, shall notice in his justification, that the words spoken or published were true, such notice, though not maintained by evidence, shall not, in any case, be of itself proof of the notice alleged in the declaration.

Proof of notice in actions of slander.

§ 79. No writ, process, declaration or other proceedings in the courts or course of justice, shall be abated, arrested, quashed or reversed for any circumstantial errors or mistakes, when the person and case may be rightly understood by the court, nor through defect or want of form only.

Writs, &c. when not to abate.

§ 80. When a bond, note or other security or contract is made to or with the treasurer of the territory or of any county, city, town, parish or other corporation, or to, or with any other public officer, an action thereon may be commenced and prosecuted by any successor in such office, in like manner as it might have been by the person with whom the contract was made.

Action brought by successor of public officer.

§ 81. In every suit or action brought to recover any forfeiture, the defendant may plead the general issue, and give in evidence any special matter which might have been in bar of the suit.

General issue pleaded.

§ 82. When there are several issues in law and in fact, the issue in law shall be first determined before the issue in fact be tried.

Issue in law first tried.

§ 83. If any person who is or shall be impleaded before any court in any civil action where a writ of error lies to a higher tribunal, shall allege an exception, such exception being reduced to writing, shall be signed and sealed by the judge or judges disallowing the same, or by a majority of them, and shall become a part of the record, if the party taking the same shall so elect.

Exception in civil cases.

§ 84. Whenever it shall appear probable in any cause depending in any district court, that the trial of the same will require the examination of a long account on either side, the said court at any time after issue joined in such case may refer such cause by rule of court to referees, who shall be three such persons as the parties may agree upon, and if they should not agree the said court shall nominate them; which referees shall hear and examine the matters in controversy and report thereon, upon pain of contempt; and an entry shall be made upon the record of such references, and day shall be given to the parties from time to time until the referees shall make a report in the premises, or they be thereof discharged; and if the report of the referees, or a majority of them, shall be confirmed by the said court, and any sum be thereby found for the plaintiff, judgment shall be entered for the same with costs, if by law the plaintiff would have recovered costs had a verdict been rendered in the same cause for a sum so reported to be due; but if the referees shall report that

Court may refer cause to referees.

To hear and examine matters, and report.

Judgment how rendered.

there is not anything due to the plaintiff, and the report be confirmed, then judgment shall be entered against the plaintiff, that he take nothing by his suit; and the defendant shall in such case have judgment for his costs if by law such defendant would have been entitled to costs if a verdict had passed in the same cause for him; and if in any cause the referees shall report any sum due the defendant, and the report be confirmed, then judgment shall be entered against the plaintiff, that he take nothing by his suit: *And further*, The defendant shall recover against the plaintiff the sum so reported to be due, with costs of suit to be taxed, and shall have execution for the same, unless the plaintiff prosecute as executor or administrator, in which case the sum reported, with costs taxed, shall be deemed a debt of record, to be paid in the course of administration, and the defendant for the recovery thereof shall have an action of debt or scire facias against the plaintiff: *Provided always*, That no report of referees shall be accepted by the court, until the execution thereof shall have been proved by affidavit or otherwise, according to the practice of courts in like case.

Commissioners employed in certain cases.

§ 85. It shall be lawful for the court in such cases as may require a report which cannot be performed without delay to other business, to employ one or more commissioners, and to cause a reasonable allowance for their services to be taxed in the bill of costs.

Actions how consolidated.

§ 86. The defendant at any time before issue joined, may move the court to consolidate actions, or to strike out any superfluous counts in the declaration, according to the usages of law.

Companies to file certain statement.

§ 87. It shall be the duty of every association or company formed for the purpose of the transportation of passengers or property, either by boats, vessels or stages, to make a statement of the names of the persons composing such association or company, and to file in the clerk's office of each county through which such association or company may transact its business, a copy of such statement.

Action not to abate if statement not filed.

§ 88. Until such statement shall be so filed, any action to be brought against such association or company shall not be abated, by reason that all the members of the association are not joined in the action.

Action not to abate against persons named in such statement.

§ 89. After such statement shall be made and filed as above provided, any action brought against the persons named in such statement shall not be abated, for the reason that other owners may have become interested, unless thirty days previous to the bringing of such action, a further statement shall be filed, as provided in the second preceding section, showing any change in the several persons composing such association, and the time when such change took place; nor shall any action become nonsuited or defeated, by reason that any of said persons have ceased to be interested therein, unless at least thirty days before such action is brought, a notice thereof shall be filed as aforesaid.

Infant may maintain action.

§ 90. When an infant shall have any right of action to recover real property, or the possession thereof, or to recover any debt or damages, he shall be entitled to maintain a suit thereon; and the same shall not be deferred or delayed on account of such infant not being of full age.

Next friend to be appointed.

§ 91. Before any process shall be issued in the name of an infant who is sole plaintiff in any suit, a competent and responsible person

shall be appointed to appear as next friend for such infant in such suit, who shall be responsible for the costs thereof.

§ 92. Such appointment shall be made as follows :

Appointment
how made.

1st. If the suit is intended to be brought in chancery, by the judge or any master :

2d. If intended to be brought in the supreme or district court, by a judge thereof, or supreme court commissioner :

3d. If intended to be brought in any other court, by a judge of such court.

§ 93. It shall be made on the petition of the infant and the written consent of the person proposed to be next friend to such infant, duly acknowledged before, or proved to, the officer making the appointment.

§ 94. Before any person shall be appointed next friend for an infant in any suit to recover any debt or damages, he shall, if required by the officer to whom application for such appointment shall be made, execute a bond to such infant in a penalty at least double the amount claimed in such suit, with such sureties as shall be approved by such officer, conditioned that such next friend shall duly account to such infant for all moneys which may be recovered in such suit.

Person ap-
pointed to
give bond if
required.

§ 95. Such bond shall be delivered to such officer before the appointment shall be made, and shall be by him filed in the office of the clerk of the district court of the county in which such infant resides ; and such officer shall be entitled to demand and receive from such next friend, the fee allowed to the clerk for filing such bond, to be paid to him.

Bond to be
filed in
clerk's
office.

§ 96. The order for the appointment of a next friend shall be filed in the office of a clerk of the court, before any bill or declaration shall be filed in such cause.

Order for
appointment
to be filed.

§ 97. After the issuing and service of process against any infant defendant, the suit shall not be any further prosecuted until a guardian for such infant be appointed.

Guardian ap-
pointed for
infant.

§ 98. Such appointment shall be made upon the request of such defendant, and on the written consent of any competent person proposed as guardian by any judge of the court, or supreme court commissioner, and shall be filed in the office of a clerk of the court, before any plea by such infant shall be filed.

Appointment
how made.

§ 99. If such infant defendant neglect for twenty days after the return day of the process by which the suit was commenced, to procure the appointment of a guardian to defend the suit, the plaintiff may obtain an order from the judge of the court, or supreme court commissioner, requiring such infant to procure the appointment of a guardian within ten days after service of such order.

§ 100. If a guardian be not appointed within the time specified in such order, the judge or officer granting the same shall appoint some discreet person to be guardian for such infant in the defence of such suit.

1b.

§ 101. No person appointed guardian for the purpose of defending a suit against an infant, shall be liable for the costs of such suit, unless specially charged by order of the court for some personal misconduct in such cause.

Guardian not
liable for
costs.

§ 102. For wrongs done to the property, rights or interests of another, for which an action might be maintained against the wrong-

Actions for
wrongs to
property.

do. how brought.

doer, such action may be brought by the person injured, or after his death by his executors or administrators, against such wrong-doer, and after his death against his executors or administrators, in the same manner and with the like effect in all respects as actions founded upon contracts.

1b.

§ 103. But the preceding section shall not extend to actions for slander, for libel, or to actions of assault and battery, or false imprisonment, nor to actions on the case for injuries to the person of the plaintiff, or to the person of the testator or intestate of any executor or administrator.

Executors, &c. not held to bail, except, &c.

§ 104. No executors or administrators shall be held to bail in any action against them in their representative character, unless such action be brought to charge them with waste.

Nor in actions for waste, except, &c.

§ 105. Nor shall they be held to bail in such action, unless upon an order of the judge of the court in which such action shall be brought, founded on an affidavit of the facts, and circumstances to support such charge.

Executors, &c. how considered; judgment rendered, &c.

§ 106. In actions against several executors or administrators, they shall all be considered as one person, representing their testator or intestate; and such of them as shall be first served with process, or as shall first appear in the action, shall answer the plaintiff. Judgment shall be rendered, and in the cases where execution may be issued against the property of the testator or intestate, it shall be awarded against such as shall have appeared and the others named in the first process, in the same manner as if they had all appeared.

Judgment, when not admission, &c.

§ 107. But no judgment rendered in such action by default or otherwise, shall be deemed evidence of any admission of assets in the hands of any executor or administrator, who was not served with process in such action, or who did not actually appear therein.

Limitation.

§ 108. The preceding section shall not deprive any plaintiff of the usual remedies to bring into court all the executors or administrators against whom the action is brought.

Limitation when to commence.

§ 109. The term of eighteen months after the death of any testator or intestate shall not be deemed any part of the time limited by law for the commencement of actions against his executors or administrators.

When executors to bring actions.

§ 110. The time which shall have elapsed between the death of any person and the granting of letters testamentary or of administration on his estate, not exceeding six months, and the period of six months after the granting of such letters shall not be deemed any part of the time limited by any law for the commencement of actions by executors or administrators.

Not liable by false plea.

§ 111. No executors or administrators shall be made personally liable for any debt, damages or costs, by reason of his having pleaded any false plea.

When not to maintain action, &c.

§ 112. An executor of an executor shall have no authority to commence or maintain any action or proceeding relating to the estate, effects or rights of the testator of the first executor, or to take any charge or control thereof as such executor.

Real estate of deceased not liable.

§ 113. The real estate which belonged to any deceased person shall not be bound or in any way affected by any judgment against his executors or administrators, nor shall it be liable to be sold by virtue of any execution issued upon such judgment.

§ 114. Any subsequent executors or administrators shall have execution upon any judgments that may have been recovered by any person who preceded them in the administration of the same estate, within one year from the time of the docketing of such judgment, without reviving the same by scire facias, and without any other proceedings to give notice to the defendant in such judgment.

When executor to have execution, &c.

§ 115. In any action against executors or administrators, in which the fact of their having administered the estate of their testator or intestate, or any part thereof, shall come in issue, and the inventory of the property of the deceased, made and filed by them, shall be given in evidence, the plaintiff or defendant may rebut the same by proof:

Evidence derived from inventory may be rebutted.

1st. That any property or effects have been omitted in such inventory, or were not returned therein at their true value.

2d. That such property has perished or been lost, without the fault of such executor or administrator, or that it has been fairly sold by them at private or public sale at a less price than the value so returned; or that since the return of the inventory such property has deteriorated or enhanced in value.

§ 116. In every such action the defendant shall not be charged for any demands or rights in action specified in their inventory, unless it appear that such demands or rights have been collected, or might have been collected with due diligence.

Executors, when charged with demands.

§ 117. The two last sections shall not be construed to vary any rules of evidence in respect to any proof which an executor or administrator may now make by law.

Limitation.

§ 118. No person shall be liable to an action as executor of his own wrong, for having received, taken or interfered with the property of a deceased person; but shall be responsible as a wrong-doer in the proper action to the executors, or general or special administrators of such deceased person, for the value of any property or effects so taken or received, and for all damages caused by his acts to the estate of the deceased.

Executor not liable in his own wrong, &c.

§ 119. When administration of the effects of a deceased person, which shall have been left unadministered by any previous executor or administrator of the same estate, shall be granted to any person, such person may bring a writ of error upon any judgment obtained against such previous executor or administrator of the same estate, or against the original testator or intestate, and shall defend any writ of error brought upon any such judgment; and shall have the same remedies in the prosecution or defence of any action by or against such previous executors or administrators, and for the collection and enforcing of any judgment as they would have by law.

Administration may bring writ of error in certain cases.

§ 120. Whenever an action shall be brought by any legatee against an executor or administrator, and the want of assets to pay all the debts of the deceased, and all the legacies bequeathed by him or any of them, shall be pleaded, the cause shall be referred to referees, to examine the accounts of the defendants, and to hear and report upon the allegations and proofs of the parties in respect to such plea.

Actions against executors referred to referees.

§ 121. Such referees shall proceed in the manner provided by law in respect to referees of actions, in which there is a long account; and all the provisions of law in relation to such referees shall apply

Referees, how to proceed.

to referees appointed pursuant to the last section, and to their proceedings and the judgment thereon.

Costs, how paid.

§ 122. In all cases the costs of the action, or of either party, shall be paid as the court may direct, out of the estate of the deceased, or by the defendants personally, if their refusal to pay such legacy, or their defence of the action shall appear to have been unreasonable.

Plaintiff failing to recover for want of assets.

§ 123. If the plaintiff in any such suit shall recover only part of his demand for the want of assets in the hands of the defendants, and assets shall afterwards come to their hands, he shall have a new action for the recovery thereof, or for the proportionate share thereof, to which he may be entitled; and the same proceedings, in all respects, shall be had in such action.

Actions against relatives, how brought.

§ 124. Actions against the next of kin of any deceased person to recover the value of any assets that may have been paid to them by an executor or administrator, may be brought against all of the said relatives jointly, or one or more of them, for the amount received by each of them.

What recovered in such action.

§ 125. In such action the plaintiff shall be entitled to recover the value of all the assets received by all the defendants in the suit, if necessary to satisfy his demand; and the amount of the recovery shall be apportioned among the defendants, in proportion to the value of the assets received by each; and no allowance or deduction shall be made from such amount on account of there being other relatives to whom assets have also been delivered.

Relatives may compel each other to contribute

§ 126. Any of the next of kin, against whom a recovery shall be had pursuant to the preceding sections, may maintain an action against the other relatives of the testator to whom any such assets may have been paid, jointly, or against any of them separately, for a just and equal contribution; and shall be entitled to recover of each defendant such an amount as shall be in the same proportion to the whole sum collected of the plaintiff, as the value of the assets delivered to such defendant bore to the value of all the assets delivered to all the relatives of the deceased.

Actions against legatees, how brought.

§ 127. Actions by creditors of any deceased person to recover the value of any assets that may have been paid by any executor or administrator to any legatees of their testator, may be brought against all of such legatees jointly, or against any single legatee separately.

What plaintiff must show to recover.

§ 128. In such action, the plaintiff shall not be entitled to recover unless he shows,

1st. That no assets were delivered by the executor or administrator of the deceased to his next of kin; or,

2d. That the value of such assets has been recovered by some other creditor; or,

3d. That such assets are not sufficient to satisfy the demands of the plaintiff:

And in the last case, he shall be entitled to recover the deficiency.

Amount recovered, how apportioned.

§ 129. The whole amount which the plaintiff shall be entitled to recover, shall be apportioned among all the legatees of the testator, in proportion to the respective amounts of their several legacies; and such proportion only shall be recovered of each legatee.

Costs, how apportioned.

§ 130. If any action be brought against several relatives jointly, or against several legatees jointly for assets delivered to them, if a recovery be had against them, the costs of such action shall be apportioned

tioned to the several defendants, in proportion to the amount of the debt or damages recovered against each of them.

§ 131. In every such action, the judgment shall express the amount recovered against each defendant, for debt or damages, and costs; and the execution thereon shall correspond to such judgment. Judgment, what to express.

§ 132. In case of any judgment against several relatives of a testator, or against several legatees, the payment or satisfaction of the amount recovered against any one of the defendants, shall discharge such defendant, and shall exonerate him and his property from such judgment, and from the execution thereon. Payment by one defendant to discharge him.

§ 133. The heirs of every person who shall have died intestate, and the heirs and devisees of any person who shall have died after the making of his last will and testament, shall respectively be liable for the debts of such person, arising by simple contract or by specialty, to the extent of the estate, interest and right, in the real estate which shall have descended to them from, or been devised to them by, such person. Heirs and legatees to what extent liable for debts.

§ 134. But such heirs shall not be liable for any such debt, unless it shall appear, that the personal assets of the deceased were not sufficient to pay and discharge the same; or that after due proceedings before the proper probate court, and at law, the creditor has been unable to collect such debt, or some part thereof, from the personal representatives of the deceased, or from his next of kin or legatees.

§ 135. In case the personal assets were sufficient to pay a part of such debt, or in case a part thereof shall have been collected, as in the last section mentioned, the heirs of such deceased person shall be liable for the residue unpaid or unsettled.

§ 136. But the two last sections shall not affect or impair the liability of heirs for any debt of their ancestor, where such debt was by his will expressly charged exclusively upon the real estate descended to such heirs; or where such debt is, by such will expressly directed to be paid out of the real estate descended, before resorting to the personal estate.

§ 137. It shall be incumbent on the creditors seeking to charge any heirs, to show the fact and circumstances herein required to render them liable. Facts required to charge heirs.

§ 138. In cases where the next of kin, heirs and devisees, are liable for the debts of their ancestors as herein provided, they shall give preference in the payment of the same, and shall be liable therefor in the following order: When relatives, &c. liable, preference given in payment.

1st. Debts entitled to a preference under the laws of the United States.

2nd. Judgments docketed, and decrees enrolled against their ancestor, according to the priority thereof respectively.

3d. Recognizances, bonds, sealed instruments, notes, bills, and unliquidated demands and accounts.

§ 139. No preference shall be given by any next of kin, legatee, heir or devisee, to any debt over other debts of the same class, except those specified in the second class of the last section; nor shall a debt, due and payable, be entitled to a preference over debts not due; nor shall the commencement of a suit against any next of kin, legatee, heir or devisee, for the recovery of any debt, entitle such debt to any preference over others of the same class. ib.

Recovery against relatives not to be had in certain cases.

§ 140. The next of kin, legatees, heirs and devisees may show that there are debts of a prior class unsatisfied, or that there are unpaid debts of the same class, with that on which the suit is brought, and if it appear that the value of the personal property delivered to them, or of the real estate, descended or devised to them, does not exceed the debts of a prior class, judgment shall be rendered in their favor.

When property will pay certain debts, &c.

§ 141. If the personal property delivered to such next of kin or legatee, or if the real estate descended or devised to such heirs and devisees, except [exceeds] the amount of debts which are entitled to a preference over the debt for which the suit is brought, judgment shall be rendered against them only for such a sum as shall be a just proportion to the other debts of the same class with that on which the suit is brought.

When prior debts to be recovered.

§ 142. If any evidence [debt] of a prior class to that on which the suit is brought, or of the same class, shall have been paid by any next of kin, legatees, heirs or devisees, they may give evidence of such payment; and the amount of debts so paid, shall be estimated in ascertaining the amount to be recovered, in the same manner as if such debts were outstanding and unpaid, as prescribed in the two last sections.

Heirs, how prosecuted.

§ 143. The heirs of any person who may be liable to any creditor of such person in consequence of lands having descended to them, shall be prosecuted jointly in a court of equity, but shall not be liable to any suit in a court of law.

When suits not to be delayed.

§ 144. Suits against heirs or devisees shall not be delayed, nor shall the remedy of the plaintiffs be suspended by reason of the infancy of any such heir or devisee; but guardians to defend their rights in such suits, shall be appointed, as in other cases.

Real estate, how specified.

§ 145. In any bill filed against heirs to charge them on account of any lands and tenements or hereditaments descended to them, the complainant shall specify with convenient certainty the real estate so descended.

What heir may show in defence.

§ 146. In such suit any heir may show that at the time of the commencement thereof he had nothing by descent, or that he had not sufficient to satisfy the complainants demand.

Value of lands, ascertained.

§ 147. If it appear that any lands or tenements have (*have*) descended to such heir, the court shall inquire and ascertain the value thereof, either by reference to a master or by awarding an issue for that purpose.

Court to decree how debt to be levied.

§ 148. If it appear that the lands, tenements or hereditaments so descended, were not aliened by such heir, at the time of the commencement of the suit; or if the heir confess the action, and show what lands, tenements or hereditaments have descended to him, the court shall decree that the debt of the plaintiff, or the proportion thereof which he is entitled to recover, shall be levied of such real estate so descended, and not otherwise.

Such decree to have preference.

§ 149. Every final decree rendered in such suit shall have preference as a lien on the real estate descended, to any judgment or decree obtained against such heir personally, for any debt or demand in his own right.

Heir, when personally liable.

§ 150. When it shall appear in any such suit, that before the commencement thereof, any such heir has aliened the lands, tenements or hereditaments so descended, the court shall decree that the debt of the plaintiff, or the proportion thereof which he is entitled to recover, shall be levied of such real estate so descended, and not otherwise.

ments or hereditaments descended to him, or any part thereof, he shall be personally liable for the value of the estate so aliened, and judgment shall be rendered therefor, and execution awarded, as in suits for his own debts.

§ 151. In such cases, the preference herein before declared, in respect to demands against the ancestor of such heir, shall apply, and which [such] heir may show the same matters herein before allowed, and the same proceedings and judgment shall be had thereon. What debts entitled to preference.

§ 152. But no lands, tenements or hereditaments, aliened in good faith by any heir, before any suit commenced against him, shall be liable to execution, or in any manner affected by a decree against such heir. Lands aliened, not affected by decree.

§ 153. In suits brought against several heirs jointly, or several devisees jointly, the amount which the plaintiff shall be entitled to recover shall be apportioned among all the heirs of the ancestor, or among all the devisees of the testator, in proportion to the value of the real estate descended to such heirs, or devised to such devisees respectively, as the case may be, and such proportion only shall be recovered of each heir, or of each legatee. Amount recovered against heirs, how divided.

§ 154. The costs of such suit shall be apportioned among the several defendants, in proportion to the debt or damages recovered against each of them; the decree shall express the amount recovered against each defendant for debt, or damages and costs; and the execution issued thereon, shall conform to such decree. Costs, how apportioned.

§ 155. When a decree shall be rendered against any heirs or devisees who are infants, no execution issued thereon shall be executed against them, until the expiration of one year after the rendition of such decree; but such execution may be executed against any defendants in the same suit, who are of full age. When decree executed against infants.

§ 156. The solicitor issuing an execution in every such case, shall endorse thereon the names of the defendants, who are infants, and shall direct the sheriff not to execute the same against such infants, until the time specified in the last section. Names endorsed on execution.

§ 157. Devisees made liable to [by] the foregoing provisions to the creditors of their testator, shall not be so liable unless it shall appear that his personal assets and the real estate of the testator, deceased [descended] to his heirs, were insufficient to discharge such debt; or unless it shall appear that after due proceedings before the proper probate judge and at law, the creditor has been unable to recover such debt, or some part thereof, from the personal representatives of the testator, or from his next of kin or legatees, or from his heirs. Devisees liable to creditors of testator.

§ 158. In either of the cases specified in the last section, the amount of the deficiency of the personal assets, and of the real estate descended, to satisfy the debt of the plaintiff, and the amount which such plaintiff may have failed to recover from the personal representatives of the testator, his next of kin, legatees and heirs, may be recovered of the devisees of such testator, to the extent of the real estate devised to them respectively. Extent of liabilities.

§ 159. But the two last sections shall not impair or affect the liability of devisees for any debt of their testator, where such debt was by his will expressly charged exclusively upon the real estate devised, or made payable exclusively by such devisee by the terms of the will, Limitation of last two sections.

or made payable out of the estate devised, before resorting to the personal estate, or to any other real estate descended or devised.

Creditors
what to show
on trial.

§ 160. It shall be incumbent on the creditor seeking to charge any devisees, to show on the trial the facts and circumstances herein required to render them liable.

Proceedings
against de-
visees.

§ 161. The provisions herein contained with regard to heirs, and to proceedings by and against them, shall be applicable to suits and proceedings against devisees, who shall in like manner be sued jointly.

Real estate
aliened not
affected by
decree.

§ 162. Devisees shall be liable, in the same manner and to the same extent, as heirs, notwithstanding they may have aliened the real estate devised before suit brought against them; but no real estate aliened in good faith by any devisee before the commencement of a suit against him, shall be liable to execution upon or in any manner affected by a decree against such devisee.

When child
born after
making will
entitled to
portion of
estate.

§ 163. In cases where, by the provisions of any statute, a child born after the making of a will shall be entitled to succeed to a portion of the testator's real and personal estate, such child shall have the same rights and remedies to compel a distribution of the personal estate and partition of the real estate, as are provided by law for the next of kin and for heirs, and shall in all respects be liable in the same manner and to the same extent to the creditors of his ancestor, in respect to the personal property delivered to him and the real estate descended to him, as are herein prescribed in relation to next of kin and heirs.

Ib.

§ 164. Such child shall be authorized to recover of the legatees who may have received any property or effects of the testator, the portion of such property or effects to which he may be entitled, by an action of replevin, or of trover or assumpsit, as the case may require; and shall also be entitled to recover of the devisees of any real estate, under the will of the testator, such portion of such real estate as shall belong to him.

Ib.

§ 165. In cases where a distribution of such personal estate shall not have been made by the judge of probate to any such child born after the making of a will, the court shall have power to compel the same; and the said court shall have power also to compel just and equal contribution by the legatees under such will, to make up the portion of personal property to which such child shall be entitled.

Ib.

§ 166. The court shall also have power to compel partition between the devisees of any real estate, and such child so entitled to a portion of such real estate, so as to enforce a just and proportionate contribution by each devisee.

Ib. to apply
to witness
entitled to
share of es-
tate.

§ 167. The foregoing provisions relative to a child born after the making of a will, shall apply equally in all respects to every person who being a witness to a will, shall be entitled by the provisions of any statute to recover any portion of the personal or real estate of the testator from the legatees and devisees named in such will.

Penalty for
bringing
vexatious
suits, &c.

§ 168. Every person who shall, for vexation and trouble or maliciously, cause or procure any other to be arrested, attached or in any way proceeded against, by any process or proceeding at law or in equity, or in any other manner prescribed by law, to answer to the suit or prosecution of any person, without the consent of such person, or where there is no such person known, shall forfeit to the person so arrested, attached or proceeded against, treble the damages and ex-

penses, which, by any verdict, shall be found to have been sustained and incurred by him, and shall forfeit to the person in whose name such arrest or proceeding was had, two hundred and fifty dollars, and shall be deemed guilty of a misdemeanor, punishable, on conviction, by imprisonment for a time not exceeding six months.

AN ACT concerning the writ of habeas corpus.

§ 1. Every person imprisoned or otherwise restrained of his liberty, Persons imprisoned to have writ of habeas corpus. except in the cases in the following section specified, may prosecute a writ of habeas corpus, according to the provisions of this act, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful.

§ 2. The following persons shall not be entitled to prosecute such writ: Persons committed or detained by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of any execution issued upon such judgment or decree; but no order of commitment for any alleged contempt, or upon proceedings as for contempt, to enforce the rights or remedies of any party, shall be deemed a judgment or decree within the meaning of this section, nor shall any attachment or other process issued upon any such order be deemed an execution within the meaning of this section. Who not entitled to writ.

§ 3. Application for such writ shall be made by petition signed Application how, by whom and to whom made. either by the party for whose relief it is intended, or by some person in his behalf, as follows: To any judge of the supreme or district courts, or any supreme court commissioner, being within the county where the prisoner is detained, or if there be no such officer within such county, or if he be absent, or for any cause be incapable of acting, or have refused to grant such writ, then to some officer having such authority residing in any adjoining county.

§ 4. Whenever application for any such writ shall be made to any officer not residing within the county where the prisoner shall be detained, he shall require proof by the oath of the party applying, or by other sufficient evidence, that there is no officer in such county authorized to grant the writ, or if there be one, that he is absent or has refused to grant such writ, or for some cause to be specially set forth is incapable of acting, and if such proof be not produced the application shall be denied. Applicant when to make oath, &c.

§ 5. The petition must state in substance,

1st. That the person in whose behalf the writ is applied for is imprisoned or restrained in his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming both parties if their names are known, or describing them if they are not. What petition for writ must state.

2d. That such person is not committed or detained by virtue of any process, judgment, decree or execution specified in the second section of this act.

3d. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the party.

4th. If the confinement or restraint is by virtue of any warrant, order or process, a copy thereof must be annexed, or it must be averred that by reason of such prisoner's being removed or concealed before the application, a demand of such copy could not be made, or

that such demand was made and the legal fees therefor tendered to the officer or person having such prisoner in his custody, and that such copy was refused.

5th. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists.

6th. It must be verified by the oath of the party making the application.

Writ to be
granted
without
delay.

§ 6. Any officer empowered to grant any writ applied for under this act, to whom such petition shall be presented, shall grant such writ without delay, unless it shall appear from the petition itself, or from the documents annexed, that the party applying therefor, is by the provisions of this act prohibited from prosecuting such writ.

Form of
writ.

§ 7. Every writ of habeas corpus issued under the provisions of this act, shall be substantially in the following form :

"The United States to the sheriff of, &c. (or to A. B.)

"You are hereby commanded to have the body of C. D. by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged, before E. F. judge of the district court (or supreme court commissioner as the case may be) at, &c. on, &c. (or immediately after the receipt of this writ) to do and receive what shall then and there be considered concerning the said C. D. And have you then there this writ.

Witness, &c."

Writ not to
be disobey-
ed for any
defect of
form.

§ 8. Such writ of habeas corpus shall not be disobeyed for any defect of form. It shall be sufficient,

1st. If the person having the custody of the prisoner be designated either by his name of office, if he have any, or by his own name, or if both such names be unknown or uncertain, he may be described by an assumed appellation; and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person.

2d. If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described in any other way so as to designate the person intended.

Penalty for
refusing
writ.

§ 9. If any officer authorized by the provisions of this act to grant writs of habeas corpus shall wilfully refuse to grant such writ when legally applied for, he shall forfeit for every such offence, to the party aggrieved, one thousand dollars.

What person
on whom
writ is serv-
ed to state
in return.

§ 10. The person upon whom any such writ shall have been duly served, shall state in his return, plainly and unequivocally,

1st. Whether he have or have not the party in his custody, or under his power or restraint.

2d. If he have the party in his custody or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large.

3d. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced, and exhibited on the return of the writ, to the officer before whom the same is returnable.

4th. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his

restraint, at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority, such transfer took place.

The return must be signed by the person making the same and except where such person shall be a sworn public officer, and shall make his return in his official capacity, it shall be verified by his oath.

§ 11. The person or officer on whom the habeas corpus shall have been served, shall also bring the body of the person in his custody, according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided.

Officer to bring body in certain cases.

§ 12. If the person upon whom such writ shall have been duly served, shall refuse or neglect to obey the same by producing the party named in such writ, and making a full and explicit return to every such writ within the time required by the provisions of this act, and no sufficient excuse shall be shown for such refusal or neglect, it shall be the duty of the officer before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person, directed to the sheriff of any county in this territory, and commanding him forthwith to apprehend such person, and to bring him immediately before such officer; and on such person being so brought, he shall be committed to close custody in the jail of the county in which such officer shall be, without being allowed the liberties thereof, until he shall make return to such writ, and comply with any order that may be made by such officer in relation to the person for whose relief such writ shall have been issued.

Person refusing to obey writ, to be imprisoned.

§ 13. If a sheriff of any county shall have neglected to return such writ, the attachment may be directed to any coroner or other person to be designated therein, who shall have full power to execute the same, and such sheriff upon being brought up, may be committed to the jail of any county other than his own.

Attachment, when directed to coroner.

§ 14. The officer by whom any such attachment may be issued, may also at the same time or afterwards, issue a precept to the same sheriff or other person to whom such attachment shall have been directed, commanding him to bring forthwith before such officer, the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such sheriff or person, until he shall be discharged, bailed or remanded, as such officer shall direct.

Officer to have person brought before him.

§ 15. In the execution of such attachment or precept, or of either of them, the sheriff or other person to whom they shall be directed, may call to his aid the power of the county, as in other cases.

Sheriff to have power of county.

§ 16. The officer before whom the party shall be brought on such writ, shall immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter or not.

Cause of confinement inquired into

§ 17. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such officer shall discharge such party from the custody or restraint under which he is held.

When party set at liberty.

§ 18. It shall be the duty of the officer forthwith to remand such party, if it shall appear that he is detained in custody, either,

In what cases party remanded.

1st. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction ; or

2d. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree ; or

3d. For any contempt specially and plainly charged in the commitment, by some court, officer or body having authority to commit for the contempt so charged ; and

4th. That the time during which such party may be legally detained has not expired.

In what cases prisoner discharged.

§ 19. If it appear on the return that the prisoner is in custody by virtue of civil process of any court legally constituted, or issued by any officer in the course of judicial proceedings before him authorized by law, such prisoner can only be discharged in one of the following cases :

1st. Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person.

2d. Where, though the original imprisonment was lawful, yet by some act, omission or event which has taken place afterwards, the party has become entitled to be discharged.

3d. Where the process is defective in some matter of substance required by law, rendering such process void.

4th. Where the process, though in proper form, has been issued in a case not allowed by law.

5th. Where the person having the custody of the prisoner under such process, is not the person empowered by law to detain him ; or

6th. Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

No inquiry as to legality of decree.

§ 20. But no officer on the return of any habeas corpus issued under this act, shall have power to inquire into the legality or justice of any judgment, decree or execution specified in the preceding second section.

Party when to be bailed.

§ 21. If it appear that the party has been legally committed for any criminal offence, or if he appear by the testimony offered with the return, or upon the hearing thereof, to be guilty of such an offence, although the commitment be irregular, the officer before whom such party shall be brought, shall proceed to let such party to bail, if the case be bailable and good bail be offered, or if not, shall forthwith remand such party.

When party placed in custody of sheriff.

§ 22. If the party be not entitled to his discharge and be not bailed, the officer shall remand him to the custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, be legally entitled thereto ; if not so entitled he shall be committed by such officer to the custody of such officer or person as by law is entitled thereto.

In custody of sheriff till judgment given.

§ 23. Until judgment be given upon the return, the officer before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such officer shall be, or place him in such care or under such custody as his age and other circumstances may require.

Person interested to have notice.

§ 24. When it appears from the return to any such writ, that the party named therein is in custody on any process under which any

other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge, until it shall appear that the party so interested, or his attorney, if he have one, if to be found within the county, shall have had sufficient notice of the time and place at which such writ shall have been made returnable.

§ 25. When it shall appear from the return that such party is detained upon any criminal accusation, such officer shall make no order for the discharge of such party, until sufficient notice of the time and place at which such writ shall have been returned, or shall be made returnable, shall be given to the district attorney of the county in which such officer shall be, if to be found within the county. District attorney to be notified.

§ 26. The party brought before any such officer on the return of any writ of habeas corpus, may deny any of the material facts set forth in the return, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath; and thereupon such officer shall proceed in a summary way to hear such allegations and proofs as may be produced in support of such imprisonment or detention, or against the same, and to dispose of such party as the justice of the case may require. Party may deny facts set forth in return.

§ 27. Whenever from the sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot without danger be brought before the officer before whom the writ is made returnable, the party in whose custody he is, may state that fact in his return to the writ, verifying the same by his oath; and if such officer be satisfied of the truth of such allegation, and the return be otherwise sufficient, he shall proceed to decide upon such return and to dispose of the matter; and if it appear that the person detained is illegally imprisoned, confined or restrained of his liberty, the officer shall grant a writ of discharge commanding those having such person in their custody to discharge him forthwith; and if it appear that such person is legally detained, imprisoned or confined, and is not entitled to be bailed, such officer shall cease from all further proceedings thereon. Proceedings when party cannot be brought before officer issuing writ.

§ 28. Obedience to any writ of discharge or to any order for the discharge of any prisoner, granted pursuant to the provisions of this act, may be enforced by the officer issuing such writ or granting such order, by attachment, in the same manner as herein provided for a neglect to make a return to a writ of habeas corpus, and with the like effect in all respects; and the person guilty of such disobedience, shall forfeit to the party aggrieved, one thousand two hundred and fifty dollars, in addition to any special damages such party may have sustained. Obedience to a writ how enforced.

§ 29. No sheriff or other officer shall be liable to any civil action for obeying any such writ or order of discharge; and if any action shall be brought against such officer for suffering any person committed to his custody to go at large, pursuant to any such writ or order, he may, with his plea of the general issue, give notice of the same in bar of such action. Officer not liable for obeying writ.

§ 30. No person who has been discharged by the order of any officer upon a habeas corpus issued pursuant to the provisions of this act, shall be again imprisoned, restrained or kept in custody for the same cause; but it shall not be deemed the same cause, Person discharged not imprisoned again for same cause.

What not
deemed
same cause.

1st. If he shall have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offence, by the legal order or process of the court wherein he shall be bound by recognizance to appear, or in which he shall be indicted or convicted for the same offence; or,

2d. If after a discharge for defect of proof, or for any material defect in the commitment in a criminal case, the prisoner be again arrested on sufficient proof, and committed by legal process for the same offence; or,

3d. If in a civil suit the party has been discharged for any illegality in the judgment or process herein before specified, and is afterwards imprisoned by legal process for the same cause of action; or,

4th. If in any civil suit he shall have been discharged from commitment on mesne process, and shall be afterwards committed on execution in the same cause, or on mesne process in any other cause after such first suit shall have been discontinued.

Penalty for
imprisoning
person dis-
charged.

§ 31. If any person shall knowingly recommit, imprison or restrain of his liberty, or cause to be recommitted, imprisoned or restrained of his liberty for the same cause, except as provided in the last section, any person so discharged, or shall knowingly aid or assist therein, he shall forfeit to the party so aggrieved, one thousand two hundred and fifty dollars, and shall also be deemed guilty of a misdemeanor.

Person con-
cealing party
entitled to
writ, guilty
of misde-
meanor.

§ 32. Any one having in his custody or under his power any person, who by the provisions of this act would be entitled to a writ of habeas corpus to inquire into the cause of his detention, who shall, with intent to elude the service of any such writ or to avoid the effect thereof, transfer any such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor.

Concealing
party after
writ has is-
sued, misde-
meanor.

§ 33. Any one having in his custody or under his power, any person for whose relief a writ of habeas corpus shall have been duly issued pursuant to the provisions of this act, who with intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor.

Assisting to
conceal.

§ 34. Every person who shall knowingly aid or assist in the violation of either of the two last preceding sections, shall be deemed guilty of a misdemeanor.

Penalty for
concealing.

§ 35. Every person convicted of any offence under either of the four last sections, shall be punished by fine or imprisonment, or both, in the discretion of the court in which he shall be convicted; but such fine shall not exceed one thousand dollars, nor such imprisonment six months.

Warrant to
be issued in
certain
cases.

§ 36. Whenever it shall appear by satisfactory proof that any one is held in illegal confinement or custody, and that there is good reason to believe that he will be carried out of the territory, or suffer some irreparable injury before he can be relieved by the issuing of a habeas corpus, any officer authorized to issue such writs, may issue a warrant under his hand and seal, reciting the facts and directed to any sheriff, constable or other person, commanding such officer

or person to take such prisoner and forthwith to bring him before such officer to be dealt with according to law.

§ 37. When the proof mentioned in the last section shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offence committed in the taking or detaining of such prisoner, the warrant shall also contain an order for the arrest of such person for such offence.

Warrant to order arrest of prisoner.

§ 38. Any officer or person to whom such warrant shall be directed, shall execute the same by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the officer issuing the same; and thereupon the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had as if a writ of habeas corpus had been issued in the first instance.

How executed.

§ 39. If the person having such prisoner in his custody, shall be brought before such officer as for a criminal offence, he shall be examined, committed, bailed or discharged by such officer, in like manner as in other criminal cases of the like nature.

Person having prisoner how dealt with.

§ 40. Any officer or other person refusing to deliver a copy of any order, warrant, process or other authority by which he shall detain any person, to any one who shall demand such copy, and tender the fees thereof, shall forfeit two hundred dollars to the person so detained.

Penalty for refusing copy of warrant.

§ 41. Every writ of habeas corpus may be made returnable at a day certain or forthwith, as the case may require.

Writ made returnable.

§ 42. Every such writ shall be endorsed with a certificate that the same has been allowed, and with the date of such allowance, which endorsement shall be signed by the officer allowing the writ.

How endorsed.

§ 43. Writs of habeas corpus can only be served by an elector of some county within this territory; and the service thereof shall not be deemed complete, unless the party serving the same shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coroner, constable or marshal, the fees allowed by law for bringing up such prisoner; nor unless he shall also give bond to such sheriff, coroner, constable or marshal, as the case may be, in a penalty double the amount of the sum for which such prisoner may be detained, if he be detained for any specific sum of money, and if not, then in the penalty of one thousand dollars, conditioned that such person will pay the charges of carrying back such prisoner, if he shall be remanded, and that such prisoner will not escape by the way, either going to or returning from the place to which he is to be taken.

Writ, by whom and how served, in certain cases.

§ 44. Every writ of habeas corpus, issued pursuant to this act, may be served by delivering the same to the person to whom it is directed; if he can not be found it may be served by being left at the jail, or other place in which the prisoner may be confined, with any under officer or other person of proper age, having charge for the time of such prisoner.

How served.

§ 45. If the person on whom the writ ought to be served conceal himself, or refuse admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling-house or of the place where the party is confined.

lb. when person conceals himself.

Sheriff, &c.
to obey writ.

§ 46. It shall be the duty of every sheriff, coroner, constable or marshal, upon whom a writ of habeas corpus shall be served, whether such writ be directed to him or not, upon payment or tender of the charges allowed by law, and the delivery or tender of the bond herein prescribed, to obey and return such writ, according to the exigency thereof; and it shall be the duty of every other person, upon whom such writ shall be served, having the custody of the individual for whose benefit the writ shall be issued, to obey and execute such writ according to the command thereof, without requiring any bond or the payment of any charges, unless the payment of such charges shall have been required by the officer issuing such writ.

Petitioner,
when to pay
charges of
bringing up
prisoner.

§ 47. Every officer allowing a writ of habeas corpus, directed to any other than a sheriff, coroner, constable or marshal, may, in his discretion, require as a duty to be performed, in order to render the service thereof effectual, that the charges of bringing up such prisoner shall be paid by the petitioner; and in such case he shall, in the allowance of the writ, specify the amount of such charges, so to be paid, which shall not exceed the fees allowed by law to sheriffs for similar services.

When pri-
soner to be
produced.

§ 48. If the writ be returnable at a certain day, such return shall be made, and such prisoner shall be produced, at the time and place specified therein; if it be returnable forthwith, and the place be within twenty miles of the place of service, such return shall be made, and such prisoner shall be produced, within twenty-four hours; and the like time shall be allowed for every additional twenty miles.

Provisions
of common
law abro-
gated.

§ 49. The provisions of the common law, in regard to the writ of habeas corpus, treated of in this act, are hereby abrogated, except so much and such parts thereof as may be necessary to carry into full effect the provisions herein contained; and the authority of courts and officers to award such writ, or to proceed thereon by the common law, shall be exercised in conformity to the provisions of this act, in all cases therein provided for.

Act not to
restrain
courts issu-
ing writs.

§ 50. Nothing contained in this act shall be construed to restrain the power of any court to issue a writ of habeas corpus, when necessary to bring before them any prisoner for trial, in any criminal case lawfully pending in the same court; or to bring in any prisoner to be examined as a witness, in any suit or proceeding, civil or criminal, pending in such court, when they shall think the personal attendance and examination of the witness necessary for the attainment of justice.

AN ACT concerning judgments and executions.

Party to
make out
record.

§ 1. Whenever a party shall obtain a judgment, he, his agent or attorney shall make out a judgment record thereof, which shall be filed with the clerk of the court in which the same was obtained.

What record
to consist of.

§ 2. Such judgment record shall consist of all the pleadings in the cause, the verdict, if there was any, and the final judgment of the court, and shall be signed, either by a judge of the district court or supreme court commissioner.

Plaintiff not
to be non-
sued.

§ 3. When a verdict shall have been rendered in any action, the plaintiff shall not thereafter be nonsuited, but judgment shall be rendered upon the matter found by such verdict.

§ 4. No judgment, in any court of record, shall be set aside for irregularity, on motion, unless such motion be made within one year Judgment not set aside. after the time such judgment was rendered.

§ 5. All judgments hereafter rendered, in any court of record, shall bind, and be a charge upon the lands, tenements, real estate and chattels real, in every county where the record, or [a] certified transcript thereof shall be filed, of every person against whom any such judgment shall be rendered, which such person may have in such counties, at the time of docketing such judgments, or which such person shall acquire at any time thereafter; and such estate and chattels real shall be subject to be sold upon execution, to be issued on such judgment. To be a charge upon lands, &c.

§ 6. From and after ten years from the time of docketing every such judgment, it shall cease to bind or be a charge upon any such property, as against purchasers in good faith, and as against encumbrances subsequent to such judgment, by mortgage, judgment, decree or otherwise. To cease after ten years.

§ 7. The time during which the party recovering such judgment shall be restrained from proceeding thereon, by any injunction of any court, or by the operation of any writ of error, shall not constitute any part of the ten years in the last section specified; but to entitle any party to such deduction, he shall, within ten years from the docketing of the judgment, file with each clerk of the court in which such judgment record, or a transcript thereof, was filed, a notice, specifying the injunction or writ of error, by which proceedings on such judgment shall have been restrained, and the time of service thereof; and if such restraint shall have ceased, such party shall specify the duration thereof. What time not reckoned part of ten years.

§ 8. The clerk with whom such notice shall be filed shall enter in the margin of the docket of such judgment, a minute stating that an injunction or writ of error, as the case may be, has been issued relating to such judgment. What clerk to enter on docket.

§ 9. In all cases in which a record of judgment shall be filed and docketed within one year after the death of the party against whom such judgment was obtained, a suggestion of such death, if it happened before judgment rendered, shall be entered on the record, and if after judgment rendered, the fact shall be certified on the back of such record by the attorney filing the same; such judgment shall not bind the real estate which such party shall have had at the time of his death, but shall be considered as a debt to be paid in the usual course of administration. Judgment when not to bind real estate.

§ 10. If a verdict has been rendered before the death of such party upon which proceedings shall be stayed by bill of exceptions, or by any order of the court or any officer thereof, the court may authorize the filing and docketing a record of judgment within one year after the death of such party, subject to the power of the court to vacate the same. When filing record of judgment authorized.

§ 11. The day and year of signing any record of judgment shall be stated in the margin thereof by the judge or other officer signing the same. Time of signing stated.

§ 12. Judgments may be entered in the supreme court or in any district court in vacation, or in term upon a plea of confession signed by an attorney of such court, although there be no suit then pending. Judgment entered on plea of confession, &c.

ding between the parties, if the following provisions be complied with, and not otherwise.

1. The authority for confessing such judgment shall be in some proper instrument, distinct from that containing the bond contract or other evidence of the demand for which judgment is confessed.

2. Such authority shall be produced to the officer signing such judgment, and shall be filed with the clerk of the court in which the judgment shall be entered, at the time of the filing and docketing such judgment.

Time of filing to be noted.

§ 13. The clerk of every court of record shall mark upon the back of every record of judgment filed in his office, the time of filing the same; no judgment shall be deemed valid so as to authorize any proceedings thereon, until the record thereof shall have been signed and filed.

Judgment not to affect lands, &c.

§ 14. No judgment shall affect any lands, tenements, real estate or chattels real, or have any preference as against other judgment creditors, purchasers or mortgagees until the record thereof be filed and docketed as herein directed.

Clerk to make entries in books.

§ 15. At the time of filing a record of judgment the clerk shall enter in an alphabetical docket, in books to be provided and kept by him, a statement of such judgment, containing,

1. The names at length of all the parties to such judgment, designating particularly those against whom it is rendered, with their places of abode, titles, trades or professions, if any such are stated in such record.

2. The amount of the debt, damages or other sum of money recovered, with the costs.

3. The hour and day of entering such docket.

4. If the judgment be against several persons, such statement shall be repeated under the name of each person against whom the judgment was recovered in the alphabetical order of their names respectively.

Books open to search.

§ 16. The books in which dockets of judgments shall be entered, shall, during the usual hours for transacting business, be open to the search and examination of all persons desiring the same.

Penalty for neglect to docket judgment.

§ 17. Every clerk who shall neglect to docket any judgment as soon as practicable, shall forfeit to the party aggrieved two hundred and fifty dollars in addition to all damages which such party may have sustained by such omission or neglect.

Recognizance not to bind lands.

§ 18. No recognizance taken by any court or by any officer, shall bind any lands, tenements or real estate or other property, but such recognizances shall be deemed to be mere evidences of debt.

Docket of judgment how discharged.

§ 19. The docket of a judgment rendered in any court of record may be cancelled and discharged by the clerk thereof, upon filing with him an acknowledgment of satisfaction, signed by the party in whose favor such judgment was obtained, or by his executors or administrators, duly authenticated as herein after directed.

Id.

§ 20. Such acknowledgment shall be made before some judge of the court in which the judgment was rendered, or before some judge of the district courts or supreme court commissioner, who shall certify that the party making the same was known or was made known to such officer by competent proof.

Id.

§ 21. Such acknowledgment may also be made, by the attorney,

on record, of the party in whose favor the same was rendered, within two years after the filing of the record of such judgment, in the same manner and with the like effect as if made by such party himself; but such satisfaction shall not be conclusive against the party in whose favor the judgment was rendered, in respect to any person to whom actual notice of the revocation of the authority of such attorney shall have been given, before any payment on such judgment shall have been made, or before any purchase of property bound by such judgment shall have been affected.

§ 22. When payment of the judgment is made, satisfaction thereof shall be acknowledged by the attorney or plaintiff receiving the amount, on payment of the fees by the defendant. Satisfaction of judgment acknowledged.

§ 23. When an execution issued upon any judgment shall be returned satisfied, in whole or in part, such judgment shall be deemed satisfied to the extent of the amount so returned, as having been collected on such execution, unless such return be vacated by the court: and upon any execution being so returned, the clerk of the court shall enter in the docket of such judgment the fact that the amount stated in such return to have been levied, has been collected. Judgment satisfied to amount collected.

§ 24. It shall be the duty of the clerk to give a certified transcript of any judgment record in his office, when the same shall be demanded and the legal fees tendered. Clerk to give copy

§ 25. Whenever judgment shall be rendered in any court of record for any debt, damages, sum of money or costs, the party in whose favor such judgment was rendered upon (*the*) filing the record thereof, and within two years thereafter may have execution to the sheriff or other proper officer, to collect the amount of such judgment. Party to have execution in two years.

§ 26. Such execution may be, either,
1. Against the goods and chattels, lands, tenements and chattels real of the party against whom such judgment was recovered. Against what execution may be.
2. Against the body of such party, in cases where executions against the body are allowed by law.

§ 27. But such execution shall not issue against the body, nor against the proper goods and chattels, lands and tenements of any executor, administrator, heir, devisee or legatee, unless in those cases specially provided by law. Execution not to issue against body, &c.

§ 28. In those cases in which bail shall have been taken on the arrest of a defendant and the bail bond shall have been assigned to the plaintiff, and in those cases in which special bail shall have been filed, no execution shall issue against the body of the defendant in such action, until an execution against the goods and chattels, lands and tenements of such defendant shall have been issued to the sheriff of the county in which such defendant was arrested, and shall have been returned unsatisfied in whole or in part. 1b. In first instance.

§ 29. But if the defendant be imprisoned on execution in another cause, or upon process in the same action, or shall have been surrendered in exoneration of his bail in such action, an execution may issue against his body in those cases allowed by law, without any previous execution against his property. If defendant imprisoned execution may issue.

§ 30. Executions, either against the body in cases allowed by law, or against the property of any party, may be issued at the same time to sheriffs of different counties, but no execution against the body of Executions may be issued to sheriffs in different counties.

any party shall issue while there is an execution against his property not returned, nor shall an execution against the property of any party issue while there is an execution against his body unreturned, unless by order of the court.

When body taken in execution.

§ 31. When the body of a party shall have been taken on an execution issued for that purpose, no other execution can be issued against him or his property, except in cases specially provided by law.

Party escaping may be retaken.

§ 32. But if any person, who shall have been taken on an execution, shall escape, he may be retaken by a new execution against his body, or an execution against his property may be issued in the same manner as if the body of such prisoner had never been taken in execution.

Interest, when to be collected.

§ 33. Whenever a judgment shall be rendered upon contract, or upon any prior judgment, and execution shall be issued thereon, it shall be lawful to direct upon such execution the collection of interest on the amount recovered, from the time of recovering the same until such amount be paid.

Execution to be endorsed.

§ 34. Upon the receipt of any execution, it shall be the duty of the sheriff or other officer to endorse thereon the year, month, day and hour of the day when he received the same.

Execution against sheriff, how directed.

§ 35. In all cases where judgment shall be obtained in any court against the sheriff of any county, either singly or with others, instead of directing the execution thereon to the coroner of the county, it may be directed and delivered to any person (except a party in interest in the suit,) who shall be designated by the court in term by an order to be entered in the minutes, or by any judge thereof in vacation, by an order to be endorsed on such execution.

Person having execution deemed coroner, &c.

§ 36. The person so designated, and receiving such execution to execute the same, shall, in respect to such execution, be deemed a coroner of the county, and shall be liable in all respects to all the provisions of law respecting sheriffs, so far as the same may be applicable.

Personal property bound.

§ 37. Personal property shall be bound from the time it is seized in execution.

Proceedings when coin levied on.

§ 38. Upon executions against the property of a defendant, the officer shall levy upon any current gold or silver coin belonging to such defendant, and shall pay and return the same as so much money collected, without exposing the same for sale at auction.

Bank bills may be sold.

§ 39. Upon such execution, the officer may levy upon and sell any bills or other evidences of debts issued by any moneyed corporation, or by the government of the United States, and circulated as money, which shall belong to the defendant in such execution.

When property pledged, right of pledger may be sold.

§ 40. When goods and chattels shall be pledged for the payment of money, or the performance of any contract or agreement, the right and interest in such goods of the person making such pledge may be sold on execution against him, and the purchaser shall acquire all the right and interest of the defendant, and shall be entitled to the possession of such goods and chattels on complying with the terms and conditions of the pledge.

Notice of sale, how given.

§ 41. No sale of any goods or chattels shall be made by virtue of any execution, unless previous notice of such sale shall have been given twenty days successively, by fastening up written or printed notices thereof in three public places of the town where such sale is to

be had, specifying the time and place where the same is intended to be had.

§ 42. The following property shall be exempt from levy and sale under any execution: What property exempt from levy and sale on execution.

1. All spinning-wheels, weaving looms and stoves, put up or kept for use in any dwelling-house.

2. The family bible, family pictures and school-books used by or in the family of such person, and books, not exceeding in value one hundred dollars, which are kept and used as part of the family library.

3. A seat or pew occupied by such person or his family in any house or place of public worship.

4. All sheep to the number of ten, with their fleeces, and the yarn or cloth manufactured from the same, one cow, five swine, the necessary food for all of them, all pork, beef, fish, flour and vegetables actually provided for family use, and necessary for six months' support, and necessary fuel for the family for one year.

5. All wearing apparel, beds, bedsteads, rocking cradle, and bedding, provided for the use of such person and his family, necessary cooking utensils, one table, six chairs, six knives and forks, six plates, six tea cups and saucers, one sugar-dish, one milk-pot, one tea-pot and six spoons, one crane and its appendages, one pair of andirons and a shovel and tongs; other household furniture necessary for the debtor and his family not exceeding fifty dollars in value. When goods are seized on execution, they shall be safely kept by the officer at the expense of the debtor, until sold according to law.

6. The tools and implements of any mechanic or minor necessary to [the] carrying on of his trade, not exceeding one hundred dollars in value.

7. All necessary utensils for a farm, not exceeding in value one hundred dollars, when the principal occupation of the debtor is farming.

8. The uniform of an officer, non-commissioned officer, or private in the militia, and the arms and accoutrements required by law to be kept by him.

9. Rights of burial and tombs, whilst in use, as repositories for the dead.

§ 43. No personal property shall be exposed for sale, unless the same be present and within the view of those attending such sale. It shall be offered for sale in such lots and parcels as shall be calculated to bring the highest price. Personal property, how sold.

§ 44. Executions to authorize the sale of real estate shall command the officer to whom they are directed, that of the goods and chattels of the person against whom such execution shall issue, in the county of such officer, he shall cause to be made the debt, damages or other sum of money and costs for which the judgment was rendered, and if sufficient goods and chattels cannot be found, that then he cause the amount of such judgment to be made of the real estate of the person against whom such judgment was rendered, which such person shall have had at the time of docketing such judgment, specifying such time, or at any time afterwards, in whose hands soever the same may then be. Duty of officer on execution for sale of real estate.

Proceedings
on execu-
tion against
terre-tenant
&c.

§ 45. If execution be issued on a judgment rendered against any person as terre-tenant, heir or devisee of any deceased person, it shall command the amount of such judgment to be made of the real estate whereof the ancestor, testator or person deceased, was seized at the time the same real estate became liable, or at any time afterwards, or at the time of the death of such ancestor, testator or other deceased person, as the case may require, unless such heir, devisee or terre-tenant shall have made his own estate liable to such judgment.

Trust es-
tates liable
on execu-
tion.

§ 46. Lands, tenements and real estate holden by any one in trust or for the use of another, shall be liable to debts, judgments, decrees, executions and attachments against the person to whose use they are holden.

On death of
party reme-
dy not sus-
pended.

§ 47. If a party die after judgment rendered against him, but before execution issued thereon, the remedy on such judgments shall not be suspended by reason of the non-age of any heir of such party; but no execution shall issue on any such judgment until one year after the death of the party against whom the same was rendered.

Party dying
new execu-
tion may is-
sue.

§ 48. If any person taken in execution against his body shall die while so charged, new execution may be issued against the goods, chattels, lands and tenements of the deceased, in the same manner as if he had never be charged in execution.

Execution,
when not to
be levied on
real estate.

§ 49. But such new executions shall not be levied upon any real estate which the deceased, after the judgment rendered against him, shall have sold in good faith.

Ib. when es-
tate sold un-
der judg-
ment.

§ 50. Nor shall such new executions be levied upon any real estate, which shall have been actually sold under any other prior or subsequent judgment against the person so dying in execution.

When equi-
ty of re-
demption not
to be sold.

§ 51. When a judgment shall be recovered for a debt secured by mortgage of real estate, or for any part of such debt, it shall not be lawful for the sheriff to sell the equity of redemption of the mortgagor, his heirs or assigns, in such estate, by virtue of any execution upon such judgment.

What attor-
ney to en-
dorse on ex-
ecution.

§ 52. Whenever any execution against the property of the defendant shall be issued upon such judgment, the plaintiff's attorney shall endorse thereon a brief description of the premises mortgaged, referring to the page and book of the record in which such mortgage is recorded, with a direction to the sheriff not to levy such execution upon the said premises, or any part thereof.

Return of
execution.

§ 53. If such execution shall not be collected of the other property of the defendant, the sheriff shall return the same unsatisfied in whole or in part, as the case may require.

Mode of ad-
vertising
sale of real
estate on
execution.

§ 54. The time and place of holding any sale of real estate, pursuant to any execution, shall be publicly advertised previously for six weeks successively, as follows:

1. A written or printed notice thereof shall be fastened up in three public places in the town where such real estate shall be sold; and if such sale be in a town different from that in which the premises to be sold are situated, then such notice shall also be fastened up in three public places of the town in which the premises are situated;

2. A copy of such notice shall be printed once in each week in a newspaper of such county, if there be one:

3. If there be no newspaper printed in such county, and the premises to be sold are not occupied by any person against whom the execution is issued, or by some person holding the same as tenant or purchaser under such person, then such notice shall be published in the paper printed at the seat of government once in each week.

§ 55. In every such notice the real estate to be sold shall be described with common certainty, by setting forth the name of the township or tract, and the number of the lot, if there be any, and if there be none, by some other appropriate description. Mode of advertising sale of real estate on execution.

§ 56. The sale of real estate, or of any personal property by virtue of any execution, shall be at public vendue, between the hour of nine o'clock in the morning and the setting of the sun. Sale to be public.

§ 57. Any officer who shall sell any real estate without the previous notices herein directed, or otherwise than in the manner, herein prescribed, shall forfeit one thousand dollars to the party injured, in addition to any damages which such party may sustain. Penalty when sale illegal.

§ 58. When real estate offered for sale by virtue of any execution, shall consist of several known lots, tracts or parcels, such lots, tracts or parcels shall be separately exposed for sale; and if any person claiming to be the owner of any portion of such estate or of such lots, tracts or parcels, or either of them, or claiming to be entitled by law to redeem any such portion, shall require such portion to be exposed for sale separately, it shall be the duty of the sheriff to expose the same for sale accordingly. No more of any real estate shall be exposed for sale than shall appear necessary to satisfy the execution. Lots and real estate to be sold separately.

§ 59. If any person shall take down or deface any notice of a sale of real or personal property put up by any sheriff previous to the day of sale therein specified, unless upon satisfaction of the execution by virtue of which such notice shall have been given, or upon the consent of the party suing out such execution and of the defendant therein, such person shall forfeit fifty dollars to the party in whose favor such execution was issued. Penalty for defacing notice of sale.

§ 60. The omission of any sheriff or other officer to give the notice of sale herein required, or the taking down or defacing of any such notice when put up, shall not affect the validity of any sale made to a purchaser in good faith, without notice of any such omission or offence. Omission of notice not to affect sale.

§ 61. The sheriff or other officer to whom any execution shall be directed, and the deputy of such sheriff or officer holding any execution and conducting any sale of property in pursuance thereof, shall not directly or indirectly purchase any property whatever at any sale by virtue of such execution; and all purchases made by such sheriff, officer or deputy, or to his use, shall be void. Officer not to purchase property.

§ 62. Upon the sale of real estate by virtue of any execution, the officer making the same shall make out and subscribe duplicate certificates of such sale, containing, Officer when to make duplicate certificates.

1. A particular description of the premises sold:
2. The price bid for each distinct lot or parcel:
3. The whole consideration money paid:
4. The time when such sale will become absolute, and the purchaser will be entitled to a conveyance pursuant to law.

§ 63. One of the said duplicate certificates shall, within ten days after such sale, be filed in the office of the register of deeds of the Certificates to whom given.

county, and the other shall be delivered to the purchaser. If there be two or more purchasers, a certificate shall be delivered to each.

To be evidence of title.

§ 64. Such original certificate, upon being proved or acknowledged in the manner required by law to entitle deeds to be recorded, or a copy of such original, duly certified by the register in whose office such original is filed, shall be received as presumptive evidence of the facts therein contained.

Real estate may be redeemed in two years.

§ 65. Within two years from the time when such sale shall have been made, the real estate so sold, or any distinct lot, tract or portion that may have been separately sold, may be redeemed by the payment to the purchaser, his personal representatives or assigns, or [to] the officer who made such sale for the use of such purchaser, of the sum of money which was bid on the sale of such lot or tract, together with the interest on that sum from the time of sale, at the rate of ten per cent a year.

By whom redeemed.

§ 66. Such redemption may be made,

1. By the person against whom the execution was issued, and whose right and title were sold in pursuance thereof; or,

2. If such person be dead, by his devisee of the premises sold, if the same shall have been devised; and if the same shall not have been devised, by the heirs of such person; or,

3. By any grantee of such person who shall have acquired an absolute title by deed, sale under mortgage or under an execution, or by any other means, to the premises sold, or to any lot, tract, parcel or portion which shall have been separately sold.

ib.

§ 67. Any heir or devisee of the person against whom the execution was issued, and any grantee of such person, who shall have acquired an absolute title to a portion of the estate sold, or a portion of any lot, tract or parcel that shall have been separately sold, may redeem the lot, tract or parcel so sold on the same terms, and in the same manner as if he were grantee of the whole lot, tract or parcel; and shall have the same remedy to enforce contribution from those who shall own the residue of such tract, lot or parcel, as if the sum required to be paid by him to effect such redemption had been collected by a sale of the portion belonging to such grantee.

ib.

§ 68. If there be several persons having undivided shares as joint tenants, or as tenants in common in the premises sold, or in any particular lot or tract sold, each person having such title may redeem the share or interest belonging to him, by paying to the purchaser, or to the officer as herein directed, a sum that will bear the same proportion to the whole purchase money bid for such premises, or for such particular lot or tract as the share proposed to be redeemed bears to the whole number of shares in such premises, or lot, or tract, together with the interest on such sum at the rate of ten per cent a year.

When certificate of sale void.

§ 69. Upon such payment being made by any person so entitled to redeem any real estate so sold, the sale of the premises so redeemed and the certificates of such sale, shall be null and void.

Effect of omitting to redeem in two years.

§ 70. In case the persons entitled as herein before provided shall omit to redeem the premises so sold, or any part of them, within the two years above prescribed, then the interest vested in the purchaser by such sale may be acquired within three months after the expiration of such two years, by the persons and on the terms hereinafter prescribed.

§ 71. Any creditor of the person against whom such execution is-^{Creditors may acquire interest of purchaser, and how.} sued, having in his own name, or as assignee, representative, trustee or otherwise, a decree in chancery or a judgment at law, rendered at any time before the expiration of twenty-seven months from the time of such sale, and which shall be a lien and charge upon the premises sold, by paying the sum of money which was paid on the sale of such premises, together with interest thereon, at the rate of seven per cent a year from the time of such sale, shall thereby acquire all the rights of the original purchaser, subject to be defeated in the manner hereinafter mentioned.

§ 72. If such judgment or decree be a lien on any lot, tract or parcel that shall have been separately sold, the creditor having the same, by paying as before provided the sum which shall have been bid for such lot, tract or parcel, with interest as above mentioned, shall thereby acquire all the rights of the original purchaser to such lot, tract or parcel, subjected to be defeated as hereinafter provided.

§ 73. If such judgment or decree be a lien on a specific portion only of any lot, tract or parcel so sold, the creditor having the same may acquire the title of the purchaser to the whole of such lot, tract or parcel, in the same manner as if such lien extended to the whole.

§ 74. Any such creditor having such decree or judgment, which is a lien upon any undivided share or interest in any real estate sold under any execution, may within the same time, on the same terms and in the same manner, acquire the title of the original purchaser to such share or interest, by paying such part of the whole purchase money of such real estate, as shall be in a just proportion to the amount of such share or interest.

§ 75. Whenever any such creditor shall have acquired the title of the original purchaser pursuant to the foregoing provisions, any other creditor who might have acquired such title according to the said provisions, may become a purchaser thereof from the first creditor who acquired the same upon the following conditions:

1. By reimbursing to such first creditor, his personal representatives or assigns, the sum which may have been paid by him to acquire such title, together with interest thereon, at the rate of seven per cent a year from the time of such payment to the time of such reimbursement.

2. If the judgment or decree, by virtue of which the first creditor acquired the title of the original purchaser, be prior to the judgment or decree of such second creditor, then such second creditor shall also pay to such first creditor the amount due on his judgment or decree.

3. But if such judgment or decree of the first creditor, at the time of his acquiring the title of the original purchaser, shall have ceased to be a lien as against such second creditor, it shall not be necessary to pay the amount thereof.

§ 76. In the same manner, any third or other creditor, who might according to the foregoing provisions acquire the title of the original purchaser, may become a purchaser thereof from the second, third or any other creditor who may have become such purchaser from any other creditor, upon the same terms and conditions specified in the last section.

Creditor
may acquire
interest of
purchaser,
and how.

§ 77. If the original purchaser of any premises, so sold, shall also be a creditor of the defendant, against whom the execution issued, and as such might acquire the title of any purchaser, according to the preceding provisions, he may avail himself of his decree or judgment, in the same manner and on the same terms herein prescribed, to acquire the title which any creditor may have obtained.

1b.

§ 78. The plaintiff, under whose execution any real estate shall have been sold, shall not be authorized to acquire the title of the original purchaser, or of any creditor to the premises so sold by virtue of the decree or judgment on which such execution issued; and [but] if he have any other decree or judgment which would entitle him to acquire such title according to the preceding provisions, he may avail himself of such other decree or judgment in the same manner and on the same terms as any other creditor.

To whom
money to be
paid.

§ 79. The sums required to be paid by the foregoing provisions to acquire the title of the original purchaser, or to become a purchaser from any creditor, may be paid to such purchaser or creditor, his representatives or assigns, or to the officer who made the sale for the use of the purchaser or creditor entitled to the same; upon such payment being made, the title of the original purchaser shall be thereby transferred to the creditor acquiring the same pursuant to the foregoing provisions, and from such creditor to any other creditor, becoming a purchaser thereof, as herein before provided.

Creditor to
leave pur-
chaser resi-
dence of
right.

§ 80. To entitle any creditor to acquire the title of the original purchaser, or to become a purchaser from any other creditor, pursuant to the foregoing provisions, he shall present to and leave with such purchaser or creditor, or the officer who made the sale, the following evidence of his right:

1. A copy of the docket of the judgment or decree under which he claims the right to purchase, duly certified by the clerk of the court or of the county in which the same is docketed.

2. A true copy of all the assignments of such judgment or decree which are necessary to establish his claim, verified by his affidavit, or by the affidavit of some witness to such assignments.

3. An affidavit, by such creditor, or by his attorney or agent, of the true sum due on such judgment or decree at the time of claiming such right to purchase.

When gran-
tee vested
with title
from time of
sale.

§ 81. The right and title of the person against whom the execution was issued, to any real estate which shall be sold thereby, shall not be divested by such sale until the expiration of twenty-seven months from the time of such sale; and if such real estate shall not have been redeemed as herein provided, and a deed shall be executed in pursuance of a sale, the grantee, in such deed, shall be deemed vested with the legal estate from the time of the sale on such execution, for the purpose of maintaining an action for any injury to such real estate.

Officer,
when to exe-
cute convey-
ance.

§ 82. After the expiration of twenty-seven months from the time of the sale of any real estate, if any part of the premises sold shall remain unredeemed by the person against whom the execution issued, or by any person entitled to redeem the same within two years from the time of such sale, according to the foregoing provisions, then the officer, making such sale, shall complete the same by executing a conveyance of the premises so remaining unredeemed, either to the

original purchaser or to the creditor who may have acquired the title of such original purchaser, or to the creditor who may have purchased such title from any other creditor, as the case may be, which conveyance shall be valid and effectual to convey all the right, title and interest which was sold by such officer.

§ 83. In case the person, who by the provisions of the preceding sections, would be entitled to a conveyance of any real estate, sold by virtue of an execution, shall die previous to the delivery of such conveyance, the officer making such sale shall execute and deliver such conveyance to the executors or administrators of the person so deceased.

When to be made to executors, &c.

§ 84. The real estate, so conveyed, shall be held in trust for the use of the heirs of such deceased person, subject to the dower of his widow, if there be any, but may be sold for the payment of his debts by the order of any judge of probate, in the same manner as lands whereof such deceased person died seised.

Estate held in trust for heirs, &c.

§ 85. If any sheriff to whom an execution shall be delivered, die or be removed from office before such execution be satisfied, his under sheriff shall proceed thereon in the same manner as the sheriff might have done; and if a sheriff, who has sold any real estate, die or be removed before executing any conveyance [in pursuance] of such sale, such conveyance shall be executed by his under sheriff, in the same manner, and with the like effect, as if done by the sheriff.

Proceeding on death of sheriff, before execution satisfied.

§ 86. If there be no such under sheriff, the court from which the execution issued, may, on the application of the plaintiff, appoint some suitable person to proceed on such execution and complete the same, instead of such under sheriff; and on the application of any person entitled to a conveyance, the court may appoint a proper person to execute the same. The person so appointed shall give such security as the court may require, and shall have the same power in relation to the object of his appointment, as the sheriff so dying or removed.

If no under sheriff.

§ 87. If any sheriff shall die or be removed from office after having made sale of any real estate, the moneys herein required to be paid to him for the redemption of such estate, or for the purpose of acquiring the title of the original purchaser, may be paid to his under sheriff, or to the clerk of the county, in the same manner, and with the like effect, as if paid to such sheriff.

If death of sheriff after sale.

§ 88. If the purchaser of any real estate, sold by virtue of an execution, his heirs or assigns, shall be evicted from the possession of such real estate; or if, in an action for the recovery thereof, judgment shall be rendered against him in consequence,

Purchaser evicted, may recover amount paid.

1. Of any irregularity in the proceedings, concerning such sale, or
2. Of the judgment upon which such execution issued, being vacated or reversed,

Such purchaser, his heirs or assigns may recover of the party for whose benefit such real estate was sold, the amount paid on the purchase thereof, with interest.

§ 89. If the party, for whose benefit such real estate was sold, and his personal representatives, upon such recovery being had against him, in consequence of any irregularity in the proceedings concerning such sale, may have further execution upon the judgment, by

When party to have new execution.

virtue of which such sale was made, to levy the sum paid on such sale, with interest; and such judgment shall be deemed valid and effectual for that purpose, against the defendant therein, his personal representatives, heirs and devisees; but not against any purchaser, in good faith, or any incumbrancer by mortgage, judgment or otherwise, whose title or whose incumbrance shall have accrued before the levy of such further execution.

When more
than propor-
tion of judg-
ment levied
on certain
lands.

§ 90. When lands and tenements, in the hands of several persons, shall be liable to satisfy any judgment, and the whole of such judgment, or more than a due proportion thereof, shall be levied upon the lands of any one or more of such persons, the persons so aggrieved, or their personal representatives, may compel a just and equal distribution by all the persons whose lands and tenements ought to contribute to the satisfaction of such judgment.

How such
lands liable
to contribu-
tion.

§ 91. Such lands and tenements shall be liable to such contribution in the following order:

1st. If they were conveyed by the defendant, in the execution, they shall be liable in succession, commencing with the lands last conveyed.

2nd. If they were sold under execution, against the defendant, they shall also be liable in succession, commencing with the lands sold under the last and youngest judgment.

3d. If there be lands so liable, which were conveyed by the defendant in the execution, and also lands which have been sold under execution, against such defendant, they shall respectively be liable in succession, according to the order herein prescribed.

Proceedings
to compel
contribution.

§ 92. If a bill be filed in chancery, to compel such contribution, the person aggrieved shall be entitled to use the original judgment, and by virtue thereof, to levy the amount which ought to be contributed by the lands and tenements subject to such judgment; and for that purpose, such judgment shall remain a lien and charge upon such lands and tenements for the term of ten years from the docketing thereof to the extent of the sum which ought to be so contributed, notwithstanding such sum, or any part thereof may have been paid by the party seeking such contribution.

1b.

§ 93. But such original judgment shall not remain a lien upon any lands, nor shall [they] be subject to an execution as herein provided, unless the person aggrieved, within twenty days after the payment of any sum of money by him, for which he shall claim a contribution, shall file an affidavit with a clerk of the court in which the original judgment was rendered, stating the sum paid, and his claim to use such judgment for the reimbursement thereof.

1b.

§ 94. On the filing of such affidavit, the clerk shall make an entry in the margin of the docket of such judgment, stating the sum so paid, and that such judgment is claimed to be a lien to that amount.

Fees of
clerk.

§ 95. The same fee shall be paid on filing any such affidavit, as for the filing and docketing a record of judgment.

Person kept
in custody.

§ 96. Whenever any person shall be arrested by virtue of an execution, issued upon any judgment rendered in a court of record, he shall be safely kept in secure custody in the manner prescribed by law.

§ 97. Every person surrendered in exoneration of his bail, shall be kept in like manner until he shall satisfy the judgment rendered against him, or be discharged according to law. When surrendered to be kept secure.

§ 98. If in any case where an officer has an execution against property, there is any reasonable doubt as to the ownership of the property, or as to its liability to be taken on the execution, the officer may require sufficient security to indemnify him for levying upon such property. Officer may require bond of indemnity.

§ 99. In actions against two or more persons jointly indebted upon any joint obligation, contract or liability, if the process issued against all the defendants shall have been duly served upon either of them, the defendant so served shall answer to the plaintiff, and in such case, the judgment, if rendered in favor of the plaintiff, shall be against all the defendants, in the same manner as if all had been served with process. Process how served when several jointly indebted.

§ 100. Such judgment shall be conclusive evidence of the liability of the defendant who was personally served with process in the suit, or who appeared therein, but against every other defendant, it shall be evidence only of the extent of the plaintiff's demand, after the liability of such defendant shall have been established by other evidence. Debtor not served, now affected.

§ 101. Execution upon every such judgment as in the last section mentioned, shall be issued in form against all the defendants, but the attorney issuing the same shall endorse thereon the names of such of the defendants as were not served with the process by which the action was commenced, and shall direct such execution to be served as provided in the next section. How execution to issue.

§ 102. Such execution shall not be served upon the person of any defendant whose name is so endorsed thereon, nor shall it be levied upon the sole property of such defendant, but it may be collected of the personal property of any such defendant, owned by him as a partner with the other defendants taken, or with any of them. Execution how served.

§ 103. A creditor by mortgage on real estate, his assignee or representative, where the mortgaged premises, or any part thereof, have been sold on execution, shall have the same right to acquire the interest of the purchaser of such real estate so mortgaged and sold, as is given to a judgment creditor by the seventy-second section of this act, and on acquiring such interest, shall be subject to all the provisions of this act in relation to the rights of other creditors, as are now applicable to judgment creditors by said article. Mortgagee may acquire title in certain cases.

§ 104. To entitle a creditor by mortgage, his assignee or representative, to acquire the title of the original purchaser, or to be substituted as a purchaser from any other creditor, pursuant to this act, he shall present to and leave with such purchaser or creditor, or the officer who made the sale, the following evidence of his right: ib.

1st. A copy of the mortgage under which he claims the right to purchase, duly certified by the clerk of the county where said mortgage is registered or recorded.

2. A copy of the assignment or assignments where the mortgage has been assigned, verified by his affidavit, or the affidavit of some other person.

3. A copy of the letter of administration, or letters testamentary,

where an administrator or executor applies to be substituted as a purchaser.

4. An affidavit by such mortgage creditor, his assignee or representative, or by his attorney or agent, stating the true sum due or to become due on such mortgage, at the time of claiming such right to purchase over and above all payments.

Share in bank may be attached.

§ 105. Any share or interest of a stockholder in any bank, insurance company, or any other joint stock company that is or may be incorporated under the authority of this territory, may be levied upon or attached by leaving an attested copy of the writ with the clerk, treasurer or cashier of the company, if there be any such officer, otherwise with any officer or person who has at the time the custody of the books and papers of the corporation.

May be sold.

§ 106. Any share or interest so levied upon or attached with all the dividends that shall thereafter accrue thereon, shall be held and sold to satisfy the judgment in like manner as any other property levied on, is held and sold.

Officer of company to give certificate of No. of shares owned by stockholder.

§ 107. If the officer having an attachment or an execution against any such stockholder, shall exhibit the writ to the officer of the company who is appointed to keep a record or account of the shares or interest of the stockholders therein, and shall request a certificate of the number of shares or amount of the interest held by the defendant in such suit, such officer of the company shall give such certificate to the person holding the writ; and if he shall unreasonably refuse to do so, or if he wilfully give a false certificate thereof, he shall be liable for double the amount of all damages occasioned by such refusal or false certificate, to be recovered in an action on the case against him, unless the judgment is satisfied by the original defendant.

AN ACT concerning oaths.

Before whom oaths may be taken.

§ 1. Whenever any oath or affidavit is or may be required or authorized by law, (except oaths to jurors and witnesses in the trial of a cause, oaths of office, and such other oaths as are required by law to be taken before particular officers,) the same may be taken before any judge of the supreme or district courts, judge of probate, supreme court commissioners, clerk of any court of record, notary public or justice of the peace, and when certified by any such officer to have been taken before him, may be read and used in any court of law or of equity, of record or not of record, within this territory, and before any officer, judicial, executive or administrative.

Persons may affirm.

§ 2. Every person who shall declare that he has conscientious scruples against taking any oath or swearing in any form, shall be permitted to make his solemn declaration or affirmation.

Mode of swearing.

§ 3. Whenever the court before which any person shall be offered as a witness, shall be satisfied that such person has any peculiar mode of swearing, which is more solemn and obligatory, in the opinion of such person, than the usual mode, the court may, in its discretion, adopt such mode of swearing such person.

b.

§ 4. Every person believing in any other than the christian religion, shall be sworn according to the peculiar ceremonies of his religion, if there be any such ceremonies.

§ 5. Every person believing in the existence of a supreme being shall be admitted to be sworn, if otherwise competent. Religious belief required.

§ 6. No person shall be required to declare his belief in the existence of a supreme being, or his belief or disbelief of any other matter, as a requisite to his admission to be sworn to testify in any case. But the belief or unbelief of every person offered as a witness, may be proved by other and competent testimony. Not to be declared.

§ 7. But the last section shall not be construed to prevent any court before whom an infant, or a person apparently of weak intellect, shall be produced as a witness, from examining such person to ascertain his capacity, and whether he understands the nature and obligations of an oath, nor shall it be construed to prevent a court from inquiring of any person what are the peculiar ceremonies observed by him in swearing, which he deems most obligatory. Limitation of last section.

§ 8. In all cases in which an oath or affidavit is required or authorized by law, the same may be taken in any of the usual forms, and every person swearing, affirming or declaring, in any such form, shall be deemed to have been lawfully sworn, and to be guilty of perjury for corruptly or falsely swearing, affirming or declaring in any such form. Oaths how taken, &c.

AN ACT concerning testimony and depositions.

§ 1. Every clerk of a court of record, and every justice of the peace, may issue subpoenas for witnesses in all civil cases pending before any court, or before any magistrates, arbitrators or other persons authorized to examine witnesses, and the subpoena shall be in the form heretofore adopted and commonly used. Who to issue subpoenas.

§ 2. Such subpoena may be served by any person, by exhibiting and reading it to the witness, or by giving him a copy thereof, or leaving such copy at the place of his abode. By whom and how served.

§ 3. No person shall be obliged to attend as a witness unless the fees are paid or tendered to him which are allowed by law for one day's attendance as a witness, and for travelling to and returning from the place where he is required to attend. Fees of witness.

§ 4. If any person duly subpoenaed and obliged to attend as a witness, shall fail so to do without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in an action on the case. Liability of witness.

§ 5. Such failure to attend as a witness in any court of record, shall also be considered a contempt of the court, and may be punished by a fine not exceeding twenty dollars. Penalty for not attending court.

§ 6. The court in such case may issue a warrant to bring such witness before them to answer for the contempt, and also to testify as a witness in the cause in which he was summoned. Warrant to bring up witness.

§ 7. Depositions may be taken in the manner and according to the regulations provided in this act, to be used before any magistrates or other persons authorized to examine witnesses in any other than criminal cases. Depositions.

§ 8. When a witness whose testimony is wanted in any civil cause pending in this territory shall live more than thirty miles from the place of trial, or shall be about to go out of the territory and not to return in time for the trial, or is so sick, infirm or aged as to make it When to be taken.

probable that he will not be able to attend at the trial, his deposition may be taken in the manner hereinafter provided.

Notice to be given. § 9. At any time after the cause is commenced by the service of process, or after it is submitted to arbitrators or referees, either party may apply to any justice of the peace, who shall issue a notice to the adverse party to appear before the said justice, or any other justice of the peace, at the time and place appointed for taking the deposition, and to put such interrogatories as he may think fit.

How served on agent, &c. § 10. The said notice may be served on the agent or attorney of the adverse party, and shall have the same effect as if served on the party himself.

On one of several parties. § 11. When there are several persons plaintiffs or defendants, or parties on either side in the cause, a notice served on either of them shall be sufficient.

Manner of service. § 12. The notice shall be served by delivering an attested copy thereof to the person to be notified, or by leaving such copy at his place of abode, allowing in all cases not less than twenty-four hours after such notice before the time appointed for taking the depositions, and also allowing time for his travel to the place appointed, after being notified not less than at the rate of one day, Sundays excepted, for every twenty miles travel.

Given verbally by justice. § 13. Instead of the written notice before prescribed, the notice may in all cases be given verbally by the justice taking the deposition, or it may be wholly omitted if the adverse party or his attorney shall in writing waive the right to it.

Deponent to swear. § 14. The deponent shall be sworn to testify the truth, the whole truth and nothing but the truth, relating to the cause for which the deposition is taken, and he shall then be examined by the justice, and by the parties if they think fit; and his testimony shall be taken in writing.

How to be examined. § 15. The party producing the deponent shall be allowed first to examine him, either upon verbal or written interrogatories, on all the points which he shall deem material, and then the adverse party may examine the deponent in like manner, after which either party may propose such further interrogatories as the case may require.

Deposition, by whom written. § 16. The deposition shall be written by the justice or by the deponent, or by some disinterested person in the presence and under the direction of the justice, and it shall be carefully read to or by the deponent, and shall then be subscribed by him.

Certificate annexed to deposition. § 17. The justice shall annex to the deposition, a certificate of the time and manner of taking it, the person at whose request, and the cause or suit for which it was taken and the reason for taking it; and stating also whether the adverse party attended, and if not, stating the notice, if any, that was given to him.

To be delivered to court. § 18. The deposition shall be delivered by the justice to the court, or arbitrators or referees before whom the cause is pending, or shall be enclosed and sealed by him and directed to them, and shall remain sealed until opened by the said court, arbitrators or referees.

When not to be used. § 19. No such deposition shall be used, if it shall appear that the reason for taking it no longer exists: *Provided, however,* That if the party producing the deposition in such case shall show any sufficient cause then existing for using the deposition, it may be admitted:

§ 20. Every objection to the competency or credibility of the deponent, and to the propriety of any question put to him, or of any answers made by him, may be made when the deposition is produced, in the same manner as if the witness were personally examined on the trial: *Provided*, That when any deposition is taken upon written interrogatories, all objections to any interrogatory shall be made before it is answered; and if the interrogatory is not withdrawn, the objection shall be noted thereon, or otherwise the objection shall not be afterwards allowed.

Objections to competency, &c. of deponent.

§ 21. When the plaintiff in any suit shall discontinue it or become nonsuit, and another suit shall afterwards be commenced for the same cause between the same parties or their respective representatives, all depositions lawfully taken for the first suit may be used in the second in the same manner, and subject to the same conditions and objections as if originally taken for the second suit: *Provided*, That the deposition shall have been duly filed in the court where the first suit is pending, and shall remain in the custody of the court from the termination of the first suit until the commencement of the second.

Depositions when used in second suit.

§ 22. The courts may from time to time make such rules as they shall find proper and convenient, as to the time and manner of opening and filing depositions and the safe keeping thereof, and any other regulations concerning the taking and using of depositions which may not be inconsistent with the provisions of law.

Rules for filing depositions.

§ 23. Any witness may be summoned and compelled to give his deposition at any place within twenty miles of his abode, in like manner and under the same penalties as he may be summoned and compelled to attend as a witness in any court.

How far witness summoned.

§ 24. The deposition of any witness without this territory may be taken under a commission issued to one or more competent persons in any state or country, by the court in which the cause is pending, and the deposition may be used in the same manner, and subject to the same conditions and objections as if it had been taken in this territory.

Deposition out of territory, how taken.

§ 25. Every such deposition shall be taken upon written interrogatories, to be exhibited to the adverse party or his attorney, and cross interrogatories to be filed by him if he shall think fit.

Id.

§ 26. The courts may make rules as to the issuing of commissions, either in vacation or term time, and the filing of interrogatories, and all other matters relating to depositions taken out of the territory: *Provided*, That such rules be not inconsistent with the provisions of law.

Rules for issuing commissions.

§ 27. All depositions and affidavits taken out of the territory in any other manner than is prescribed in the three preceding sections, if taken before any notary public or other person authorized by the laws of any state or country to take depositions, may be admitted or rejected, at the discretion of the court: *Provided*, That no such deposition or affidavit shall be admitted unless it shall appear that the adverse party had sufficient notice of the taking thereof, and opportunity to cross-examine the witness.

Certain depositions, how treated by court.

§ 28. When any person shall be desirous to perpetuate the testimony of any witness, he shall make a statement in writing, setting forth briefly and substantially his title, claim or interest, in or to the

Evidence, how to be perpetuated.

subject concerning which he desires to perpetuate the evidence; and the names of all other persons interested or supposed to be interested therein, and also the name of the witness proposed to be examined, and shall deliver the said statement to a district judge or supreme court commissioner, requesting him to take the deposition of the said witnesses.

Evidence,
how to be
perpetuated.

1b.

§ 29. The said judge or commissioner shall thereupon cause notice to be given of the time and place appointed for taking the deposition, to all persons mentioned in the said statement as interested in the case, which notice shall be given in the same manner as is prescribed in this act, respecting notice upon taking a deposition in this territory to be used in any cause here pending.

Deposition
to be record-
ed.

§ 30. The deponent shall be sworn and examined, and his deposition shall be written, read and subscribed in the same manner as is prescribed respecting the other depositions before mentioned, and the judge or commissioner shall annex thereto a certificate under his hand, of the time and manner of taking it, and that it was taken in perpetual remembrance of the thing; and they shall also insert in the certificate the names of the person at whose request it was taken, and of all those who were notified to attend, and of all who did attend, the taking thereof.

When to be
used.

§ 31. The deposition with the certificate, and also the written statement of the party at whose request it was taken, shall within ninety days after the taking thereof be recorded in the registry of deeds in the county where the land lies, if the deposition relates to real estate, otherwise in the county where the parties or some of them reside.

§ 32. If any suit shall, either at the time of taking such deposition, or at any time afterwards, be pending between the person at whose request it was taken and the persons named in the said written statement, or any of them, who were notified as aforesaid, or any persons claiming under either of the said parties, respectively, concerning the title, claim or interest set forth in the statement, the deposition so taken, or a certified copy of it from the registry of deeds, may be used in such suit, in the same manner, and subject to the same conditions and objections, as if it had been originally taken for the said suit.

Witness
compelled
to give depo-
sition.

§ 33. Any witness may be summoned and compelled to give his deposition in perpetual remembrance of the thing, as before prescribed, in like manner and under the same penalties as are provided in this act respecting other depositions taken in this territory.

Deposition
to perpetu-
ate testimo-
ny out of ter-
ritory, how
taken.

§ 34. Depositions to perpetuate the testimony of witnesses living without the territory may be taken in any state, or in any foreign country, upon a commission to be issued by the supreme or district court, in the manner hereinafter provided.

1b.

§ 35. The person who proposes to take the deposition shall apply to either of the said courts, and file therein a statement like that before prescribed, to be delivered to the judge or justice of the peace upon taking such a deposition within this territory; and if the subject of the proposed deposition relates to real estate within this territory, the statement shall be filed in the county where the land, or any part thereof lies, otherwise in the county where the parties, or some of them reside.

1b.

§ 36. The court shall order notice of such application and statement to be served on all the persons mentioned therein as adversely

interested in the case, and living within the territory; which notice shall be served fourteen days at least before the time therein appointed for hearing the parties.

§ 37. If upon such hearing of the parties, or of the applicant alone should no adverse party appear, the court shall be satisfied that there is sufficient cause for taking the deposition, they shall issue a commission therefor, in like manner as for taking a deposition to be used in any cause pending in the same court.

Deposition to perpetuate testimony out of territory, how taken.

§ 38. The deposition shall be taken upon written interrogatories, filed by the applicant, and cross interrogatories, filed by any party adversely interested, if he shall think fit; and it shall be taken and returned substantially in the same manner as if taken to be used in a cause pending in the same court.

On written interrogatories.

§ 39. The person who proposes to take the deposition may, at his election, file his statement in the clerk's office in vacation, and may cause notice thereof to be given to the persons therein named as adversely interested, by serving them with an attested copy of the said statement, fourteen days at least before the next term of the court; and the court may thereupon proceed to hear the parties, and to issue the commission as before provided.

Person to file statement in clerk's office.

§ 40. The supreme court may, from time to time, make rules as to taking depositions to perpetuate the testimony of witnesses without the territory, whether taken under a commission from the supreme court or district court, and as to the filing and recording of such depositions: *Provided*, That such rules be not inconsistent with the provisions of law.

Supreme court to make rules.

§ 41. All depositions to perpetuate the testimony of witnesses, taken at any place without this territory according to the provisions of this act, may be used in like manner as if taken within the territory.

Depositions to be used.

§ 42. Depositions to perpetuate the testimony of witnesses, within or without the territory, so that the same may be evidence against all persons, may be taken upon a commission to be issued, after public notice, by the supreme or district courts.

Taken on commission.

§ 43. The person who desires to have such deposition taken may apply to either of the said courts, in the manner before prescribed in the case of taking a deposition to perpetuate the testimony of a witness living without the territory; and all the proceedings thereon shall be the same as are prescribed in the case last mentioned.

Manner of proceeding.

§ 44. The court shall, in addition to the proceedings so before prescribed, inquire, upon the oath of the applicant or otherwise, at their discretion, as to all persons known or supposed to be interested in the case; and shall, in the commission, direct the commissioner or commissioners, to publish in such newspaper or newspapers, within or without the territory, or both, or in such other manner as the court shall consider most effectual, such notice of the time and place of taking of such deposition, and of the subject matter thereof, as the court shall think proper, which notice shall be addressed, specially by name, to all persons who are known or supposed to be interested in the case, and generally to all others, that they may attend and propose cross interrogatories to the witness; and the court may also require personal notice of the time and place of taking, and of the subject matter of such deposition, to be given to such persons, and in such manner as under all the circumstances shall seem proper.

Deposition
to be record-
ed.

How and by
whom used.

Witness
compelled to
give deposi-
tion.

Members of
certain cor-
porations not
incapacita-
ted as wit-
nesses.

Endorser of
writ may be
sworn.

Incompeten-
cy of wit-
ness.

Records of
courts of
other states,
&c. evi-
dence.

Printed sta-
tutes of ter-
ritory evi-
dence.

Id., other
states, &c.

§ 45. Such deposition having been taken and returned to the court, by whose order the commission issued, and being found by the court to have been taken according to law and the directions contained in the commission, the court shall order it to be recorded within thirty days in the registry of deeds for the county in which the land lies, if the deposition relates to real estate, otherwise in the county in which the parties or some of them reside.

§ 46. Any deposition taken and recorded under the provisions of the four preceding sections, or a certified copy thereof, from the registry, may be used by the person at whose request it was taken, or by any person claiming under him, against any person whatever, in any suit or process, wherein shall be brought in question the title, claim or interest, set forth in the statement upon which the commission was founded, in the same manner and subject to the same conditions and objections, as if it had been originally taken for said suit or process.

§ 47. Any witness may be summoned and compelled in like manner, and under the same penalties as are prescribed in this act, to give his deposition in any cause pending in a court, in any state or government; which deposition may be taken before any justice of the peace in this territory, or before any commissioners that may be appointed under the authority of the state or government in which the suit is pending; and if the deposition is taken before such commissioners, the witness may be summoned and compelled to appear before them, by process from any justice of the peace in this territory.

§ 48. In all cases in which any county, city, town, district or precinct, or any parish or incorporated or legally organized religious society, or any school district, or any incorporated mutual fire insurance company, shall be, in their corporate capacity, parties to, or interested in any suit, whether of a civil or criminal nature, any member of such corporation may be admitted as a competent witness, to testify on trial or to give his deposition; provided there being no sufficient objection to his competency, except that of his being such member of the corporation.

§ 49. If any person shall be disqualified to testify in any suit, by reason of having endorsed the original writ or process, or of being a surety in the recognizance of the appellant, or in a replevin bond, he may be discharged by order of the court, so as to be sworn as a witness, provided another sufficient endorser or surety be substituted in his stead, to be liable in like manner and to the same extent as he would have been.

§ 50. No person shall be deemed an incompetent witness by reason of having committed any crime, unless he has been convicted thereof.

§ 51. The records and judicial proceedings of any court of any state or territory, or of the United States, shall be admissible in evidence, in all cases in this territory, when authenticated by the attestation of the clerk, prothonotary or other officer, having charge of the records of such court, with the seal of such court annexed.

§ 52. The printed copies of all statutes, acts and resolves of this territory, whether of a public or private nature, which shall be published under the authority of the government, shall be admitted as sufficient evidence thereof, in all courts of law and on all occasions whatsoever.

§ 53. Printed copies of the statute laws of any state or territory of

the United States, if purporting to be published under the authority of their respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts of law, and on all other occasions in this territory as prima facie evidence of such laws.

§ 54. The unwritten or common law of any state or territory of the United States, may be proved as facts by parol evidence, and the books of reports of cases adjudged in their courts may also be admitted as evidence of such law. Common law of other states, how proved.

§ 55. The existence and the tenor or effect of all foreign laws may be proved as facts by parol evidence; but if it shall appear that the law in question is contained in a written statute or code, the court may in their discretion reject any evidence of such law that is not accompanied by a copy thereof. Foreign laws, how proved.

§ 56. An exemplification of a judgment rendered by any justice of the peace in any state or other territory of the United States, officially certified by such justice as a correct and full copy of all the proceedings in that case from his docket, with a certificate thereon, signed and authenticated according to the laws of the state or territory where such judgment was rendered, shall be good and legal evidence in any court or legal proceedings in this territory, to prove the facts contained in such exemplification. Judgment of justice, how proved.

§ 57. In all actions or proceedings at law in civil cases, either party may give notice to the adverse party, his agent or attorney, that he wishes to have him sworn as a witness in such cause; and if said adverse party shall not appear at the time of trial, or shall refuse to be sworn or testify, then the party causing such subpoena to be served, or giving such notice, if the notice shall be deemed by the court sufficient, may himself be sworn as a witness in such cause. Parties may be witnesses.

§ 58. When notice of any application to any court or judicial officer for any proceeding authorized by law, is required to be published in one or more newspapers, an affidavit of the printer of such newspaper, or of his foreman or principal clerk, annexed to a printed copy of such notice, taken from the paper in which it was published, and specifying the time when and the paper in which such notice was published, may be filed with the proper officer, of the court, or with the judicial officer before whom such proceeding shall be pending, at any time within six months after the last day of the publication of such notice, unless sooner specially required. Proof of publication of notice how made.

§ 59. When any notice of a sale of real property is required by law to be published in any newspaper, an affidavit of the printer of such newspaper, or of his foreman or principal clerk, annexed to a printed copy of such notice, taken from the paper in which it was published, and specifying the times when and the paper in which such notice was published, may be filed at any time within six months after the last day of such publication, with the register of deeds of the county in which the premises sold are situated.

§ 60. The original affidavit so filed pursuant to the two last sections, and copies thereof, duly certified by the officer in whose custody the same shall be, shall be presumptive evidence in all cases, and in every court or judicial proceeding of the facts contained in such affidavit.

§ 61. The affidavit of the printer or foreman of such printer of any public newspaper published in this territory, of the publication

of any notice or advertisement which by any law of this territory shall be required to be published in such newspaper, shall be entitled to be read in evidence, in all courts of justice in this territory, and in all proceedings before any officer, body or board, and shall be prima facie evidence of such publication and of the facts stated therein.

Certified copies of record when to be evidence.

§ 62. Whenever a certified copy of any affidavit, record, document or other paper, is allowed by law to be evidence, such copy shall be certified by the officer in whose custody the same is required by law to be, to have been compared by him with the original, and to be a correct transcript therefrom, and of the whole of such original, and if such officer have any official seal by law, such certificate shall be authenticated by such seal.

Limitation.

§ 63. But the preceding section shall not be construed to require the affixing of the seal of a court to any certified copy of a rule or order made by such court, or of any paper filed therein, when such copy is used in the same court, or before any officer thereof.

Written instrument may be proved, &c.

§ 64. Every written instrument, except promissory notes and bills of exchange, and except the last wills of deceased persons, may be proved or acknowledged in the manner now provided by law for taking the proof or acknowledgment of conveyances of real estate, and the certificate of the proper officer endorsed thereon, shall entitle such instrument to be read in evidence in all courts of justice, and in all proceedings before any officer, body or board, with the same effect, and in the same manner as if such instrument were a conveyance of real estate.

Register and clerk of district courts to receive instruments.

§ 65. The register of deeds and the clerk of the district court in every county in this territory, upon being paid the fees allowed therefor by law, shall receive and deposite in their offices respectively, any instruments or papers which any person shall offer to them for that purpose, and if required shall give to such person a written receipt therefor.

Instrument endorsed and filed.

§ 66. Such instruments or papers shall be properly endorsed, so as to indicate their general nature, and the names of the parties thereto, shall be filed by the officer receiving the same, stating the time when received, and shall be deposited and kept by him and his successors in office, in the same manner as his official papers, in some place separate and distinct from such papers.

Not to be withdrawn.

§ 67. The instruments or papers so received and deposited shall not be withdrawn from such office, except on the order of some court, for the purpose of being read in evidence in such court, and then to be returned to such office; nor shall they be delivered without such order to any person, unless upon the written order of the person who deposited the same, or his executors or administrators.

Open to examination.

§ 68. Such instruments or papers so deposited, shall be open to the examination of any person desiring the same, upon the payment of the fees allowed by law.

Proof of loss of document how made.

§ 69. Whenever any officer, to whom the legal custody of any document, instrument or paper shall belong, shall certify under his official seal, that he has made diligent examination in his office for such paper, instrument or document, and that it cannot be found, such certificate shall be presumptive evidence of the facts so certified in all causes, matters and proceedings, in the same manner and with the like effect as if such officer had personally testified to the same in the

court or before the officer before whom such cause, matter or proceeding may be pending.

§ 70. Any competent witness in a cause, shall not be excused from answering a question relevant to the matter in issue, on the ground merely that the answer to such question, may establish or tend to establish that such witness owes a debt, or is otherwise subject to a civil suit. But this provision shall not be construed to require a witness to give any answer which will have a tendency to accuse himself of any crime or misdemeanor, or to expose him to any penalty or forfeiture, nor in any respect to vary or alter any other rule respecting the examination of witnesses. Witness compelled to answer in certain cases.

§ 71. No person duly authorized to practise physic or surgery, shall be compelled to disclose any information which he may have acquired in attending any patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon. Physicians, when not compelled to answer.

§ 72. Whenever a party to any action shall have been permitted to prove by his own oath the loss of any instrument, in order to admit other proof of the contents thereof, the adverse party may also be examined by the court on oath, to disprove such loss, and to account for such instrument. Proof of loss of instrument, how rebutted.

§ 73. In any suit founded upon any negotiable promissory note or bill of exchange, or in which such note, if produced, might be allowed as a set-off in the defence of any suit, if it appear on the trial that such note or bill was lost, while it belonged to the party claiming the amount due thereon, parol or other evidence of the contents thereof may be given on such trial, and notwithstanding such note or bill was negotiable, such party shall be entitled to recover the amount due thereon as if such note or bill had been produced. Party, when to recover on lost note, &c.

§ 74. But to entitle a party to such recovery, he shall execute a bond to the adverse party in a penalty at least double the amount of such note or bill, with two sureties, to be approved by the court in which the trial shall be had, conditioned to indemnify the adverse party, his heirs and personal representatives, against all claims by any other person on account of such note or bill, and against all costs and expenses by reason of such claim. To execute bond to adverse party.

§ 75. In suits by or against an aggregate corporation, the admission of any member thereof, not named on the record as a party to such suit, shall not be received as evidence against such corporation, unless such admission was made concerning some transaction in which such member was the authorized agent of such corporation. Admission of members of corporation not evidence.

§ 76. Any member of a corporation aggregate, not named on the record as a party to a suit brought by or against such corporation, shall be received as a competent witness to testify to any matter against the interest of such corporation. Member of corporation may testify.

§ 77. Whenever a party in any cause or proceeding, shall produce at the trial his account books, and swear that the same are his account books kept for that purpose; that they contain the original entries of charges for goods or other articles delivered, or work and labor, or other services performed, or materials found, and that such entries are just to the best of his knowledge and belief; that said entries are in his own hand writing, and that they were made at or about the time said goods or other articles were delivered, said work and labor or

other services were performed, or said materials were found, then such books shall be admitted as competent testimony in proof of such charges.

Account
book evi-
dence.

§ 78. Whenever the original articles [entries,] mentioned in the preceding section, are in the handwriting of an agent, servant or clerk of the party, the oath of such agent, servant or clerk may in like manner be admitted to verify the same, and said books shall be testimony in the same manner as the books mentioned in the preceding section: *Provided*, That such books, mentioned in this and the preceding section, shall not be admitted as testimony of any item of money delivered at one time, exceeding five dollars, or of money paid to third persons, or of charges for rent.

Ledger,
when pro-
duced.

§ 79. Where a book has marks, which show that the items have been transferred to a ledger, the book shall not be testimony unless the ledger be produced.

Entries by
deceased
persons.

§ 80. Any entries made in a book by a person authorized to make the same, he being dead, may be received as evidence in a case proper for the admission of such book as evidence.

Instrument
purporting
to have been
signed, evi-
dence, &c.

§ 81. Every written instrument, purporting to have been signed or executed by any person, shall be proof that it was so signed or executed, until the person by whom it purports to have been signed or executed, shall deny the signature or execution of the same by his oath or affidavit; but this section shall not extend to instruments purporting to have been signed or executed by any person who shall have died previous to the requirement of such proof.

AN ACT concerning the action of ejectment.

Action of
ejectment
allowed.

§ 1. The action of ejectment may be brought in the courts of this territory, subject to the provisions hereinafter contained.

In what
cases may
be brought.

§ 2. It may also be brought,

1. In the same cases in which a writ of right might heretofore be brought by law to recover lands, tenements or hereditaments, and by any person claiming an estate therein, in fee or for life, either as heir, devisee or purchaser.

2. By any widow entitled to dower, or by a woman so entitled and her husband, after the expiration of six months from the time her right accrued, to recover her dower of any lands, tenements or hereditaments.

By whom.

§ 3. No person can recover in ejectment, unless he has, at the time of commencing the action, a valid subsisting interest in the premises claimed, and a right to recover the same, or to recover the possession thereof, or of some share, interest or portion thereof, to be proved and established at the trial.

Against
whom.

§ 4. If the premises for which the action is brought are actually occupied by any person, such actual occupant shall be named defendant in the declaration; if they are not so occupied, the action must be brought against some person exercising acts of ownership on the premises claimed, or claiming title thereto or some interest therein at the commencement of the suit.

How com-
menced.

§ 5. It shall be commenced by the service of a declaration, in which the name of the real claimants shall be inserted as plaintiffs; and all the provisions of law concerning lessors of a plaintiff shall apply to such plaintiffs.

§ 6. The use of fictitious names of plaintiffs or defendants, and of the names of any other than the real claimants and the real defendants, and the statement of any lease or demise to the plaintiff, and of ejectment by a casual or nominal ejector, are hereby abolished.

Fictitious
names abo-
lished.

§ 7. It shall be sufficient for the plaintiff to aver, in his declaration, that on some day therein to be specified, and which shall be after his title accrued, he was possessed of the premises in question, describing them as hereinafter provided; and being so possessed thereof, that the defendant afterwards, on some day to be stated, entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof, to his damage, any nominal sum the plaintiff shall think proper to state.

Declaration.

§ 8. In such declaration the premises claimed shall be described with convenient certainty, designating the number of the lot or township, if any, in which they shall be situated; if none, stating the names of the last occupants of lands adjoining the same, if any; and if none, describing such premises by [metes] and bounds, or in some other way, so that from such description possession of the premises claimed may be delivered.

Premises,
how describ-
ed.

§ 9. If such plaintiff claims any undivided share or interest in any premises he shall state the same particularly in such declaration.

Plaintiff
claiming un-
divided share.

§ 10. If the action be brought for the recovery of dower, the declaration shall state that the plaintiff was possessed of the one undivided third part of the premises, as her reasonable dower as a widow of her husband, naming him. In every other case the plaintiff shall state whether he claims in fee, or whether he claims for his own life or the life of another, or for a term of years, specifying such lives, or the duration of such term.

To specify
estate, &c.

§ 11. In any case other than where the action shall be brought for the recovery of dower the declaration may contain several counts, and several parties may be named as plaintiffs, jointly, in one count, and separately, in others.

Plaintiff,
how named,
&c.

§ 12. To such declaration there shall be subjoined a notice, in writing, by the plaintiff or his attorney, addressed to the defendant, and notifying him,

Notice to be
subjoined to
declaration,
and con-
tents.

1st. That the said declaration will be filed, on some day in the then next term of the court in which the action is brought, specifying such day; or if the same be served during the term of any court, that it will be filed on such day in such term, specifying the same.

2nd. That upon filing the same a rule will be entered requiring such defendant to appear and plead to such declaration, within twenty days after the entry of such rule; and,

3rd. That if he neglect so to appear and plead, a judgment, by default, will be entered against him, and the plaintiff will recover possession of such premises.

§ 13. If the premises are actually occupied, the declaration shall be served by delivering a copy thereof, with the notice above prescribed, to the defendant named therein who shall be in the occupation thereof, personally, or by leaving the same with some person of proper age at the dwelling house of such defendant, if he be absent.

Declaration,
how served.

§ 14. If the premises claimed are not actually occupied, the declaration and notice shall be served on the defendant named therein,

personally, or if he can not be found, by leaving the same with some person of proper age at the residence of such defendant.

Rule to
plead, when
not entered.

§ 15. But where the declaration shall have been served in any other manner than upon the defendant, [personally,] no rule to plead shall be entered, without the special order of the court.

What to be
entered.

§ 16. Instead of the rule to appear and enter into the consent rule, the plaintiff, on the day specified for that purpose in the notice aforesaid, or on some other day thereafter, upon filing the declaration with an affidavit of the due service of a copy thereof, and of the notice herein before required, shall be entitled to enter a rule, requiring the defendant to appear and plead within twenty days after the entering of such rule, and in case the defendant shall neglect so to appear and plead within such time, his default shall be entered.

Authority of
attorney to
commence
action.

§ 17. No action in ejectment shall be commenced by an attorney, unless he has written authority from each of one of the plaintiffs, for commencing the same; any written request of such plaintiff or his agent to commence such action, or any written recognition of the authority to commence the same, duly proved by the affidavit of such attorney, or other competent witness, shall be sufficient presumptive evidence of such authority; such affidavit shall be served on the defendant at the time of the service of the declaration.

Defendant
what to
plead.

§ 18. The defendant may demur to the declaration as in personal actions, or he shall plead the general issue only, which shall be that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff, as alleged in the declaration, and the filing and service of such plea or demurrer shall be deemed an appearance in the cause. And upon such plea, the defendant may give the same matter in evidence, and the same proceedings shall be had as formerly, upon the plea of not guilty in the action of ejectment, except as herein otherwise provided.

Evidence.

§ 19. Upon such plea, the defendant may give in evidence any matter which, if pleaded in the present writ of right, or action of dower, would bar the action of the plaintiff.

Rule abolish-
ed.

§ 20. The consent rule is hereby abolished.

Plaintiff to
show right of
possession.

§ 21. It shall not be necessary for the plaintiff to prove an actual entry under title, nor the actual receipt of any profits of the premises demanded; but it shall be sufficient for him to show a right to the possession of such premises, at the time of the commencement of the suit as heir, devisee, purchaser, or otherwise.

Lease, entry,
&c. not to be
confessed,
&c.

§ 22. It shall not be necessary, on the trial, for the defendant to confess, nor for the plaintiff to prove lease, entry and ouster, or either of them, except as provided in the next section; but this section shall not be construed to impair, nor in any way to affect any of the rules of evidence now in force in regard to the maintenance and defence of the action.

Actual ouster
when to be
proved.

§ 23. If the action be brought by one or more tenants in common, or joint tenants against their co-tenants, the plaintiff, in addition to all other evidence which he may be bound to give, shall be required to prove, on the trial of the cause, that the defendant actually ousted such plaintiff, or did some other act amounting to a total denial of his right, as such co-tenant.

Verdict in
certain ca-
ses.

§ 24. If the action be brought against several defendants, and a joint possession of all be proved, the plaintiff shall be entitled to a

verdict against all, whether they shall have pleaded separately or jointly.

§ 25. When the action is against several defendants, if it appear on the trial that any of them occupy distinct parcels in severalty or jointly, and that other defendants possess other parcels in severalty or jointly, the plaintiff shall elect, at the trial, against which he will proceed, which election shall be made before the testimony in the cause shall be deemed closed, and a verdict shall thereupon be rendered for the defendants not so proceeded against.

Plaintiff to elect, when action against several

§ 26. In the following cases, the verdict shall be rendered as follows :

Verdict how recovered, &c.

1. If it be shown on the trial, that all the plaintiffs have a right to recover the possession of the premises, the verdict in that respect shall be for the plaintiffs generally :

2. If it appear that one or more of the plaintiffs have a right to the possession of the premises, and that one or more have not such right, the verdict shall specify for which plaintiff the jury find, and as to which plaintiff they find for the defendant.

3. If the verdict be for any plaintiff, and there be several defendants, the verdict shall be rendered against such of them as were in possession of the premises, or as claimed title thereto at the commencement of the action.

4. If the verdict be for all the premises claimed, as specified in the declaration, it shall in that respect be for such premises generally.

5. If the verdict be for a part of the premises described in such declaration, the verdict shall particularly specify such part as the same shall have been proved, with the same certainty herein before required in the declaration, in the description of the premises claimed.

6. If the verdict be for an undivided share or interest in the premises claimed, it shall specify such share or interest, and if for an undivided share in part of the premises claimed, it shall specify such share, and shall describe such part of the premises as herein before required.

7. The verdict shall also specify the estate which shall have been established on the trial by the plaintiff, in whose favor it shall be rendered, whether such estate be in fee for his own life, or for the life of another, stating such lives, or whether it be a term for years, and specifying the duration of such term.

§ 27. If the right or title of a plaintiff in ejectment expire after the commencement of the suit, but before trial, the verdict shall be returned according to the fact, and judgment shall be entered that he recover his damages by reason of the withholding of the premises by the defendant to be assessed, and that as to the premises claimed, the defendant [go] thereof without day.

§ 28. The action of ejectment shall not be abated by the death of any plaintiff, or of one of several defendants, after issue and before verdict or judgment, but the same proceedings may be had as in other actions, to substitute the names of those who may succeed to the title of the plaintiff so dying, in which case the issue shall be tried as between the original parties, and in case of the death of a defendant, the cause shall proceed against the other defendants.

Action not to abate by death.

Judgment
what to be
in certain
cases.

§ 29. In cases where no other provision is made, the judgment in the action, if the plaintiff prevail, shall be that the plaintiff recover the possession of the premises, according to the verdict of the jury, if there was such verdict, or if the judgment be by default, according to the description thereof in the declaration, with costs to be taxed.

Plaintiff
when to have
writ of pos-
session.
Form of
writ.

§ 30. The plaintiff recovering judgment, shall be entitled to a writ of possession, which shall be substantially in the following form :

"The United States, to the sheriff, &c.

"Whereas, A. B. has lately, in the district court held in and for the county of _____ by the judgment of the said court, recovered against C. D. one messuage, &c. (describing the premises recovered, with the like certainty as above provided,) which said premises have been and are still unjustly withheld from the said A. B. by the said C. D., whereof he is convicted as appears to us of record; and for as much as it is adjudged in the said court that the said A. B. have execution upon his said judgment against the said C. D., according to the force, form and effect of his said recovery; therefore we command you, that without delay you deliver to the said A. B. possession of the said premises so recovered, with the appurtenances, and that you certify to, &c. at, &c. on, &c. in what manner you shall have executed this writ. (If there be costs to be collected, the proper clause may be here inserted, or a separate execution may be issued therefor.) Witness, &c."

Execution
how to issue
for costs.

§ 31. Upon a judgment against the plaintiff, or one or more plaintiffs, in cases where they shall be liable for costs, execution for the collection of the same shall be issued, as upon judgments in personal actions, and the proceeding by attachment for the collection of such costs is hereby abolished.

Judgment
rendered on
verdict con-
clusive.

§ 32. Every judgment in the action of ejectment, rendered upon verdict, shall be conclusive as to the title established in such action, upon the party against whom the same is rendered, and against all persons claiming from, through or under such party, by title accruing after the commencement of such action, subject to the exceptions hereinafter contained.

New trial to
be granted.

§ 33. The court in which such judgment shall be rendered, at any time within one year thereafter, upon the application of the party against whom the same was rendered, his heirs or assigns, and upon payment of all costs and damages recovered thereby, shall vacate such judgment, and grant a new trial in such cause. But no more than one new trial shall be granted under this section.

Judgment
by default
conclusive.

§ 34. Every judgment in ejectment rendered by default, shall, from and after two years from the time of docketing the same, be conclusive upon the defendant, and upon all persons claiming from or through him by title accruing after the commencement of the action. But within two years after the docketing of such judgment, on the application of the defendant, his heirs or assigns, and upon payment of all costs and damages recovered thereby, the court shall vacate such judgment, and grant a new trial.

Limitation of
previous
section.

§ 35. But if the defendant in such action at the time of the docketing of the judgment by default, be either,

1. Within the age of twenty-one years; or,
2. Insane; or,

3. Imprisoned on any criminal charge, or in execution upon some conviction of a criminal offence for any term less than for life; or,

4. A married woman;

The time during which such disability shall continue shall not be deemed any portion of the said two years; but any such person may bring an action for the recovery of such premises after that time, and within two years after such disability shall be removed, but not after that period.

§ 36. If the person entitled to commence such action shall die during the continuance of any disability specified in the preceding section, and no determination or judgment be had of or upon the title, right or action so to him accrued, his heirs may commence such action after the time above limited for that purpose, and within two years after his death. Further limitation.

§ 37. If the plaintiff shall have taken possession of the premises by virtue of any recovery in ejectment, such possession shall not in any way be affected by the vacating of any judgment as herein provided; and if the defendant recover in any new trial hereby authorized, he shall be entitled to a writ of possession in the same manner as if he was plaintiff. Possession not affected by vacation of judgment.

§ 38. Upon any new trial granted as herein provided, the defendant may show any matters in bar of a recovery which he might show to entitle him to the possession of the premises if he were plaintiff in the action. What shown in bar of recovery.

§ 39. The plaintiff recovering judgment in ejectment in any of the cases in which such action may be maintained, shall also be entitled to recover damages against the defendant for the rents and profits of the premises recovered. But if such action be brought for the recovery of the dower, the plaintiff shall be entitled to recover such damages as the court and jury may deem proper. Damages may be recovered.

§ 40. Instead of the action of trespass for mesne profits, the plaintiff seeking to recover such damages shall, within one year after the docketing of the judgment, make and file a suggestion of such claim, which shall be entered, with the proceedings thereon, upon the record of such judgments, or be attached thereto as a continuation of the same. Proceedings to recover damages.

§ 41. Such suggestions shall be substantially in the same form as is now in use, for a declaration in an action of assumpsit for use and occupation, as near as may be, and it shall be served on the defendant in the same manner herein before prescribed respecting the service of a declaration in ejectment; and a rule to plead thereto shall be entered, and notice thereof given in the same manner as upon declaration in personal actions. Id.

§ 42. The defendant may plead the general issue of non-assumpsit, and under such plea may give notice of, or may plead specially, any matters in bar of such claim, except such as were or might have been controverted in such action of ejectment; but he may plead or give notice of a recovery by such defendant, or any other person of the same premises, or of part thereof, subsequent to the verdict in such action of ejectment, in bar or in mitigation of the damages claimed by the plaintiff. What defendant may plead.

§ 43. If any issue of fact be joined on such suggestion, it shall be tried as in other cases, and if such issue be found for the plaintiff, the Issues of fact, how tried, &c.

same jury shall assess his damages to the amount of the mesne profits received by the defendant since he entered into possession of the premises, subject to the restrictions hereinafter contained.

What plaintiff required to establish.

§ 44. On the trial of such issue the plaintiff shall be required to establish, and the defendant may controvert, the time when such defendant entered into possession of the premises, the time during which he enjoyed the mesne profits thereof, and the value of such profits, and the record or [of] recovery in the action of ejectment shall not be evidence of such time.

Improvements may be set off.

§ 45. On such trial the defendant shall have the same right to set off permanent improvements made on the premises, to the amount of the plaintiff's claim as is now allowed by law. And in estimating the plaintiff's damages, the value of the use by the defendant of any improvements made by him, shall not be allowed to the plaintiff.

Time to recover rents, &c.

§ 46. The plaintiff shall not be entitled to recover the rents and profits of the land so recovered, for any longer term than six years.

Writ of inquiry, when issued.

§ 47. If no issue of fact be joined on such suggestion, or if judgment thereon be rendered against the defendant by default, on demurrer or otherwise, a writ of inquiry to assess the value of such mesne profits shall be issued, of the execution of which sufficient notice shall be given to the defendant or his attorney.

What plaintiff required to establish.

§ 48. Upon the execution of such writ, the plaintiff shall be required to establish the same matters herein before required in the case of an issue being joined, and the defendant may in like manner controvert the same, and make any set-off to which he shall be entitled, and the jury shall assess the damages in the same manner; the same proceedings shall be had on such writ, and it shall be returned as in other cases, with the inquisition taken thereon.

Judgment, how rendered.

§ 49. Upon such inquisition, or upon the verdict of the jury in the case of an issue being joined, the court shall render judgment as in actions of assumpsit for use and occupation, which shall have the like effect in all respects.

Personal representative may recover.

§ 50. If the plaintiff in ejectment shall have died after issue joined or judgment therein, his personal representatives may enter a suggestion of such death, of the granting letters testamentary or of administration to them, and may suggest their claim to the mesne profits of the premises recovered, in the same manner and with the like effect as the deceased, and the same proceedings in all respects shall be had thereon.

Dower, how assigned to widow.

§ 51. If the action be brought to recover the dower of any widow, which shall not have been admeasured to her before the commencement of such action, instead of a writ of possession being issued, such plaintiff shall proceed to have her dower assigned to her in manner following:

1. Upon the filing of the record of judgment, the court, upon the motion of the plaintiff, shall appoint three reputable and disinterested freeholders commissioners for the purpose of making admeasurement of the dower of the plaintiff out of the lands described in the record, and the commissioners so appointed shall proceed immediately to the discharge of their duties.

2. The report of the commissioners may be appealed from by any party to the action.

3. Upon the confirmation of the report of the commissioners, a writ of possession shall be issued to the sheriff of the proper county, describing the premises assigned for the dower, and commanding the sheriff to put the plaintiff in possession thereof.

§ 52. The costs and expenses incurred in such admeasurement of dower, shall be subject to the order of the court.

§ 53. No action of ejectment shall hereafter be maintained by a mortgagee or his assigns or representatives, for the recovery of the possession of the mortgaged premises, until the equity of redemption shall have expired. Ejectment not maintained.

AN ACT concerning amendments.

§ 1. The court in which any action shall be pending shall have power to amend any process, pleading or proceeding in such action, either in form or substance, for the furtherance of justice, on such terms as shall be just, at any time before judgment rendered therein. Court may amend process.

§ 2. If such amendment be made to any pleading in matter of substance, the adverse party shall be allowed an opportunity, according to the course and practice of the court, to answer the pleading so amended. Party allowed to answer.

§ 3. Process by which any action shall have been commenced, and on which any defendant shall have been arrested, shall not be amended on the return day thereof. Process not amended on return day.

§ 4. After judgment rendered in any cause, any defects or imperfections in matter of form, contained in the record, pleadings, process, entries, returns or other proceedings in such cause, may be rectified and amended by the court in affirmance of the judgment, so that such judgment shall not be reversed or annulled; and any variance in the record from any process, pleading or proceeding had in such cause, shall be reformed and amended according to such original process, pleading or proceeding. Defects in form amended after judgment.

§ 5. All returns made by any sheriff or other officer, or by any court or subordinate tribunal, to any court, may be amended in matter of form by the court to which such returns shall be made, in their discretion, as well before as after judgment. Officer's return may be amended.

§ 6. Any imperfection or defect in the award of any venire, or any omission to award such venire on the record, may be amended or supplied by the court in which such record is. Defect in award of venire.

§ 7. When a verdict shall have been rendered in any cause, the judgment thereon shall not be stayed, nor shall the judgment upon such verdict, or any judgment upon confession, default, nihil dicit or non sum informatus, be reversed, impaired or in any way affected by reason of the following imperfections, omissions, defects, matters or things, or any of them, in the pleadings, process, proceedings or record, namely:

1. For want of any writ original or judicial.

2. For any default or defect in process, or for misconceiving any process or awarding the same to a wrong officer, or for the want of any suggestion for awarding process, or for any insufficient suggestion.

3. For any imperfect or insufficient return of any sheriff or other officer, or that the name of such officer is not set to any return actually made by him.

4. For any variance between the original writ, bill, plaint and declaration, or between either of them.

5. For any mispleading, miscontinuance or discontinuance, insufficient pleading, lack of color, joefail or misjoining of issue.

6. For the want of any warrant of attorney by either party, except in cases of judgment by confession, where such warrant is expressly required by law.

7. For any party, under twenty-one years of age, having appeared by attorney, if the verdict or judgment be for him.

8. For the want of any allegation or averment, on account of which omission a special demurrer could have been maintained.

9. For omitting any allegation or averment of any matter, without proving which the jury ought not to have given such verdict.

10. For any mistake in the name of any party or person, or in any sum of money, or in the description of any property, or in reciting or stating any day, month or year, when the correct name, time, sum or description shall have been once rightly alleged in any of the pleadings or proceedings.

11. For mistake in the name of any juror or officer.

12. For the want of a right venue, if the cause was tried by a jury of the proper county.

13. For any informality in entering a judgment or making up the record thereof, or in any continuance or other entry upon such record.

14. For any other default or negligence of any clerk or officer of the court, or of the parties or their counsellors or attorneys, by which neither party shall have been prejudiced.

What omissions may be supplied.

§ 8. The omissions, imperfections, defects and variances in the preceding section enumerated, and all other of the like nature, not being against the right and justice of the matter of the suit, and not altering the issue between the parties on the trial, shall be supplied and amended by the court where the judgment shall be given, or by the court into which such judgment shall be removed by writ of error.

Process, how amended.

§ 9. No process, pleading or record shall be amended or impaired by the clerk or other officer of any court, or by any other person, without the order of such court, or of some other court of competent authority.

To what actions this act to extend.

§ 10. The provisions of this act shall extend to all actions in courts of law, and to all suits for the recovery of any debt due to this territory, or for any debt, duty or revenue belonging to it; and also to all actions for penalties and forfeitures, to all writs of mandamus and prohibition, to all informalities [informations] in the nature of a quo warranto, to writs of scire facias and to the proceedings therein.

AN ACT concerning the time of commencing actions.

Actions included in provisions of this act.

§ 1. The actions included within the provisions of this act, are ei-

1st. Such as relate to real estate;

2d. Those which may be brought for the recovery of any debt or demand, or for the recovery of damages only ;

3d. Those which may be brought for penalties or forfeitures ;

4th. Suits in courts of equity.

§ 2. The right of action of any person injured by any felony, shall not in any case be merged in such felony, or be in any manner affected thereby, Right of action not merged in felony.

§ 3. No action for the recovery of any lands, tenements or hereditaments, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seised or possessed of the premises in question, within twenty years before the commencement of such action. Actions to recover lands, when to be brought.

§ 4. No avowry or cognizance of title to real estate, or to any rents or services, shall be valid, unless it appear that the person making the avowry, or the person in whose right the cognizance is made, or the ancestor, predecessor or grantor of such person, was seised or possessed of the premises in question, within twenty years before (the) committing the act, in defence of which such avowry or cognizance is made. When avowry of title not valid.

§ 5. No entry upon real estate shall be deemed sufficient or valid, as a claim, unless an action be commenced thereupon within one year after the making of such entry, and within twenty years from the time when the right to make such entry descended or accrued. When entry not valid.

§ 6. In every action for the recovery of real estate, or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law, and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title, for twenty years before the commencement of such action. Possession presumed on establishing title.

§ 7. Whenever it shall appear that the occupant, or those under whom he claims, entered into the possession of any premises under the claim of title, exclusive of any other right, founding such claim upon some written instrument, or [as] being a conveyance of the premises in question, or upon the decree of [or] judgment of some competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree or judgment, or of some part of such premises under such claim for twenty years, the premises so [included shall be deemed to have been] held adversely; except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed the possession of any other lot of the same tract. What to constitute adverse possession.

§ 8. For the purpose of constituting an adverse possession by any person claiming a title, founded upon some written instrument, or some judgment or decree, land shall be deemed to have been possessed and occupied in the following cases :

1st. Where it has been usually cultivated or improved :

2d. Where it has been protected by a substantial enclosure :

3d. Where, although not enclosed, it has been used for the supply of fuel or of fencing timber, for the purposes of husbandry, or the ordinary use of the occupant :

4th. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

What to constitute adverse possession.

§ 9. Where it shall appear that there has been an actual, continued occupation of any premises, under a claim of title exclusive of any other right, but not founded upon any written instrument or any judgment or decree, the premises so actually occupied, and no other, shall be deemed to be held adversely.

1b.

§ 10. For the purpose of constituting an adverse possession by a person claiming title not founded upon some written instrument, or some judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only :

1st. Where it has been protected by a substantial enclosure :

2d. Where it has been usually cultivated or improved.

Possession of tenant deemed possession of landlord.

§ 11. Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord until the expiration of twenty years from the termination of the tenancy, or where there has been no written lease until the expiration of twenty years from the time of the last payment of rent, notwithstanding such tenant may have acquired another title, or may have claimed to hold adversely to his landlord ; but such presumption shall not be made after the periods herein limited.

Right of possession when not impaired.

§ 12. The right of any person to the possession of any real estate, shall not be impaired or affected by a descent being cast in consequence of the death of any person in possession of such estate.

Provision in cases of disability.

§ 13. If any person entitled to commence any action in this act specified, or to make any entry, avowry or cognizance, be at the time such title shall first descend or accrue, either,

1st. Within the age of twenty-one years ; or,

2d. Insane ; or,

3d. Imprisoned on any criminal charge, or in execution upon some conviction of a criminal offence for any term less than for life ; or,

4th. A married woman,

The time during which such disability shall continue, shall not be deemed any portion of the time in this act limited for the commencement of such suit, or the making such entry, avowry or cognizance. But such person may bring such action or make such entry, avowry or cognizance after the said time so limited, and within ten years after such disability is removed, but not after that period.

In case of death during disability.

§ 14. If the person entitled to commence such action or to make such entry, avowry or cognizance, shall die during the continuance of any disability specified in the preceding section, and no determination or judgment be had of the title, right or action to him accrued, his heirs may commence such action, or make such entry, avowry or cognizance after the time in this act limited for that purpose, and within ten years after his death, but not after that period.

Certain actions to be commenced within six years.

§ 15. The following actions shall be commenced within six years next after the cause of action shall accrue, and not afterwards :

1st. All actions of debt founded upon any contract or liability, not under seal, except such as are brought upon the judgment or decree of some court of record of the United States, or of any state or territory of the United States :

2ndly. All actions upon judgments rendered in any court not being a court of record :

3dly. All actions for arrears of rent :

4thly. All actions of assumpsit, or upon the case, founded on any contract or liability, expressed or implied :

5thly. All actions for waste and for trespass upon land :

6thly. All actions of replevin, and all other actions for taking, detaining or injuring goods or chattels :

7thly. All other actions on the case, except actions for slanderous words and for libels.

§ 16. All actions for assault and battery and for false imprisonment, and all actions for slanderous words and for libels, shall be commenced within two years next after the cause of action shall accrue, and not afterwards. Certain actions to be commenced within two years.

§ 17. All actions against sheriffs or other officers for the escape of persons imprisoned on civil process, shall be commenced within one year from the time of such escape, and not after. 1b. within one year.

§ 18. All actions against sheriffs and coroners, upon any liability incurred by them, by the doing of any act in their official capacity, or by the omission of any official duty, except for escapes, shall be brought within three years after the cause of action shall have accrued, and not after that period. 1b. against sheriffs within three years.

§ 19. None of the foregoing provisions shall apply to any action brought upon a promissory note which is signed in the presence of an attesting witness, provided the action be brought by the original payee, or by his executor or administrator, nor to an action brought upon any bills, notes or other evidences of debt issued by any bank. Preceding provisions when not to apply.

§ 20. In all actions of debt or assumpsit brought to recover the balance due upon a mutual and open account current, the cause of action shall be deemed to have accrued at the time of the last item proved in such account. Actions for balance of account, &c.

§ 21. If any person entitled to bring any of the actions before mentioned in this act, shall at the time when the cause of action accrues be within the age of twenty-one years, or a married woman, insane, imprisoned or absent from the United States, such person may bring the said actions within the times in this act respectively limited after the disability shall be removed. Who disabled from bringing actions.

§ 22. All personal actions on any contract not limited by the foregoing sections, or by any other law in this territory, shall be brought within twenty years after the accruing of the cause of action. Personal actions not limited.

§ 23. When any person shall be disabled to prosecute an action in the courts of this territory, by reason of his being an alien, subject or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed any part of the respective periods herein limited for the commencement of any of the actions before mentioned. Provision as to aliens.

§ 24. If at the time when any cause of action mentioned in this act shall accrue against any person, he shall be out of the territory, the action may be commenced within the time herein limited therefor When person out of territory when cause of action accrued.

after such person shall come into the territory ; and if after any cause of action shall have accrued, the person against whom it has accrued shall be absent from and reside out of the territory, the time of his absence shall not be taken as any part of the time limited for the commencement of the action.

When plaintiff or defendant die.

§ 25. If any person entitled to bring any of the actions before mentioned in this act, or liable to any such action, shall die before the expiration of the time herein limited therefor, or within thirty days after the expiration of the said time, and if the cause of action does by law survive, the action may be commenced by or against the executor or administrator of the deceased person, as the case may be, at any time within two years after the grant of letters testamentary or of administration, and not afterwards, if barred by the provisions of this act.

Time in which new action may be commenced in case of failure, &c.

§ 26. If in any action duly commenced within the time in this act limited and allowed therefor, the process shall fail of a sufficient service or return by any unavoidable accident, or by any default or neglect of the officer to whom it is committed, or if the process shall be abated or the action otherwise avoided or defeated by the death of any party thereto, or for any matter of form, or if after a verdict for the plaintiff the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on a writ of error, the plaintiff may commence a new action for the same cause at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein ; and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence such new action within the said one year.

When cause of action concealed.

§ 27. If any person who is liable to any of the actions mentioned in this act, shall fraudulently conceal the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within six years after the person who is entitled to bring the same shall discover that he has such cause of action, and not afterwards.

Rights of joint contractors.

§ 28. If there are two or more joint contractors or joint executors, or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the provisions of this act, so as to be chargeable by reason only of any acknowledgment or promise made by any other or others of them.

Plaintiff to recover of part of joint contractors.

§ 29. In actions commenced against two or more joint contractors, or joint executors or administrators of any contractor, if it shall appear on the trial, or otherwise, that the plaintiff is barred by the provisions of this act as to one or more of the defendants, but is entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff, as to any of the defendants against whom he is entitled to recover, and for the other defendant or defendants, against the plaintiff.

When defendant pleads that others should be joined.

§ 30. If in any action on contract the defendant shall plead in abatement that any other person ought to have been jointly sued, and issue be joined on that plea, and if it shall appear on the trial that the action was by reason of the provisions of this act barred against the person so named in the plea, the said issue shall be found for the plaintiff.

§ 31. Nothing contained in the three preceding sections shall alter, take away or lessen the effect of a payment of any principal or interest made by any person; but no endorsement or memorandum of any such payment written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom such payment shall be made, or purport to be made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of the provisions of this act.

Effect of payment, &c. when not lessened.

§ 32. If there are two or more joint contractors, or joint executors or administrators of any contractor, no one of them shall lose the benefit of the provisions of this act so as to be chargeable by reason only of any payment made by any other or others of them.

Effect of payment by one joint contractor.

§ 33. All the provisions of this act shall apply to the case of any debt on contract, alleged by way of set-off on the part of a defendant; and the time of limitation of such debt shall be computed in like manner as if an action had been commenced therefor, at the time when the plaintiff's action was commenced.

Provision to apply to set-offs.

§ 34. All actions and suits for any penalty or forfeiture on any penal statute brought by the territory, or any person to whom the penalty or forfeiture is given, in whole or in part, shall be commenced within two years next after the offence is committed, and not afterwards.

Time to bring actions for penalty.

§ 35. The two preceding sections shall not apply to any suit which is or shall be limited by any statute to be brought within a shorter time than is prescribed therein, but such suit shall be brought within the time that may be limited by such statute.

Preceding provisions, when not to apply.

§ 36. Every judgment and decree in any court of record of the United States, or of any State or territory of the United States, shall be presumed to be paid and satisfied at the expiration of twenty years after the judgment or decree was rendered.

Judgments, when presumed paid.

§ 37. Whenever there is a concurrent jurisdiction in the courts of common law, and in courts of equity of any cause of action, the provisions of this act, limiting a time for the commencement of a suit for such cause of action in a court of common law, shall apply to all suits hereafter to be brought for the same cause in the court of chancery.

Provisions to apply to court of equity.

§ 38. The last section shall not extend to suits over the subject matter of which a court of equity has peculiar and exclusive jurisdiction, and which subject matter is not cognizable in the courts of common law.

Not to extend to suits in certain cases.

§ 39. Bills for relief, on the ground of fraud, shall be filed within six years after the discovery, by the aggrieved party, of the facts constituting such fraud, and not after that time.

Bills for relief to be filed in six years.

§ 40. Bills for relief, in case of the existence of a trust, not cognizable by the courts of common law, and in all other cases, not herein provided for, shall be filed within ten years after the cause thereof shall accrue, and not after.

Ib. in trust in ten years.

§ 41. If the person, entitled to file any bill, specified in the two last sections, be, at the time of discovering the facts constituting such fraud, or at the time the cause for filing such bill shall accrue, under any of the disabilities enumerated in this act, the time during which such disabilities shall continue, shall be excepted from the limitations contained in the two last sections, in the same manner and with the

Death or disability of person entitled to file bill.

like effect, as such time is herein excepted from the limitation prescribed for commencing actions at law; and in case of the death of the person so entitled, during such disability, or before the expiration of the time herein limited for filing such bills, the same may be filed by the heirs or representatives of such person, as the case may require, within the same time as allowed in this act, for commencing actions at law, in the like cases.

AN ACT concerning bail.

When person not held to bail in certain actions.

§ 1. No person shall be arrested or required to give bail in any action of debt, assumpsit, or in any action founded upon contract, commenced in any court of record, unless the plaintiff, his agent or attorney, shall make an affidavit before some supreme court commissioner or district judge, stating that the defendant is indebted to him, and in what sum, and as he verily believes, either,

1st. That such defendant is a non-resident of the territory, and that the debt was contracted therein; or,

2d. That he is about to remove his residence from the territory, with intent to defraud his creditors; or,

3d. That he has removed his property out of the territory for the purpose of defrauding his creditors.

Order to be endorsed on process.

§ 2. When such affidavit is made, and the officer before whom it is taken is satisfied of the truth of the statements therein contained, he shall immediately make an order which shall be endorsed upon the process, and signed by such officer, that the defendant be held to bail in the penal sum of double the amount so sworn to be due.

When capias ad satisfaciendum to issue.

§ 3. If such affidavit be made, after judgment obtained, the judge or commissioner may order that a capias ad satisfaciendum be issued against the defendant; but such order shall be vacated by such officer, upon satisfactory proof being adduced, that any material statement in such affidavit is untrue.

Proceedings in actions of tort.

§ 4. In all actions of tort, if the plaintiff, his agent or attorney, shall make an affidavit before some district judge, or supreme court commissioner, that he hath good cause of action against the defendant, stating the particulars thereof, and the amount of damages he claims, such judge or commissioner shall make an order, that the defendant be held to bail in such sum as the justice of the case may require, which order shall be endorsed on the process, and signed by such officer.

When not held to bail.

§ 5. No person shall be held to bail on a capias ad respondendum, unless the true cause of the action be particularly expressed therein.

Sheriff to arrest defendant.

§ 6. The sheriff or other officer to whom any writ shall be delivered, requiring the defendant to be held to bail, as herein provided, shall execute the same, by arresting the body of the defendant, and keeping him in his custody until discharged, according to law.

Sheriff to take bail bond.

§ 7. No officer shall be required to accept a bail bond unless it be with two sureties at least, having sufficient property within the territory; and if he take a bail bond with only one surety, he shall be liable to the plaintiff for any loss sustained by the insufficiency of the bail, although the surety may have been actually sufficient when taken.

§ 8. A bail bond shall bind the persons who execute it, though it be taken with one surety only, or with two or more sureties, when they or either of them may not have sufficient within the county, as is required in the preceding section. Effect of bail bond.

§ 9. When bail is taken in any civil action, it shall be taken by a bond to the officer serving the process, with the addition of his name of office, conditioned that the defendant shall appear and answer to the plaintiff in the suit, and that he shall abide the final judgment of the court thereon, and shall not avoid. Bond to be taken to officer.

§ 10. The officer shall not be obliged to receive such bond unless either, Officer not obliged to receive bond, &c.

1st. Such sureties shall be approved of by the plaintiff, his agent or attorney, which shall be endorsed on such bond, and signed by the person approving the same; or,

2d. Such sureties shall each make an affidavit before such officer, (who is hereby authorized to administer the oath,) that he is worth the amount stated in the bond over and above all debts, which affidavit shall also be signed by the sureties, endorsed on the bond, and certified to by the officer.

Should the officer take a bond without such approval, or such affidavit, he shall be liable to the plaintiff for any loss sustained by the insufficiency of the bail.

§ 11. The officer shall give to each of the sureties a bail piece, in substance as follows: To give sureties, a bail piece.

Territory of Wisconsin, county ss.
The day of A. D. 18 C. D. is bailed by
E. F. and G. H. of the county of a bail bond having been
given, as by law directed, upon a capias ad respondendum, returnable to the district court for the county of to be holden at
on the day of next, at the suit of A. B. in
an action of on which capias is an order requiring the defendant to be held to bail in the sum of dollars. Form of bail piece.

J. J., Sheriff.

§ 12. The bail bond shall be returned and filed with the writ, and the clerk shall note on the writ that a bond is so filed, and in case of an appeal, the bond shall be sent with the other papers to the court appealed to. Bond to be returned and filed.

§ 13. In case of the avoidance of the principal, and the return of the execution, that he is not found, his bail shall be obliged to satisfy the judgment with interest thereon, from the time when it was rendered, unless he shall discharge himself by surrendering the principal before final judgment against him on the writ of scire facias, or by other sufficient defence in that suit. When bail to satisfy judgment, &c.

§ 14. The bail bond shall be considered, as so far a matter of record, and of the nature of a recognizance, that the creditor may take out a writ of scire facias thereon, in his own name, against the bail, in which it shall be sufficient to allege, substantially, that the defendants became bail, without setting forth the bail bond. Creditor may take out scire facias.

§ 15. The scire facias shall be issued from the court in which judgment against the principal is rendered, and may be taken out of the clerk's office in vacation as well as in term time. What court to issue scire facias.

Time allowed to serve scire facias.

§ 16. No such action shall be maintained against any person as bail, unless the writ of scire facias be served on him within one year after the rendition of final judgment against the principal.

What defence made to such action.

§ 17. The defendants in such action may either jointly or severally plead that they never became bail, as alleged in the writ, and shall thereupon be entitled to every ground of defence of which they could have availed themselves, upon a plea that the bond is not their deed, if an action of debt had been brought on the bond, or they may plead specially any sufficient matter in their discharge.

Bail may surrender principal.

§ 18. The bail may surrender the principal to the jailer of the proper county, who shall receive the prisoner, and hold him in custody, in like manner as if he had been committed by the officer who arrested him on the original writ, at any time before final judgment therein against them, and on paying the costs of suit on the scire facias up to that time they shall be discharged.

May arrest principal without process.

§ 19. The surety may at any time, any where in this territory, arrest his principal by authority of his bail piece, without further process, and may carry him to the jailer of the proper county, and may authorize any one to assist him in the same.

To notify plaintiff.

§ 20. He shall within fourteen days give notice in writing to the plaintiff in the suit, or to his attorney, of the time when and the place where the prisoner was so committed.

Person committed by bail, may be bailed.

§ 21. Every person who is surrendered by his bail and committed to prison, may be forthwith bailed, whether notice of the surrender shall or shall not have been given to the plaintiff, and shall in all respects have the same rights and privileges as if he had been committed upon the original arrest.

When committed for want of bail, &c.

§ 22. If a defendant arrested on process, in which he is required to be held to bail, shall be committed to prison for the want of such bail, the sheriff shall specially return upon such process the fact that the defendant is so imprisoned for want of bail.

Time for plaintiff to declare against defendant.

§ 23. The plaintiff shall declare against such defendant, on or before the first day of the term at which such process was returnable, and shall deliver a copy of the said declaration to such prisoner, or to the sheriff or keeper of the jail, in whose custody such prisoner shall be; if such declaration be not served as herein prescribed, the defendant shall be discharged from his imprisonment, and shall be entitled to judgment of discontinuance against the plaintiff.

May sue out scire facias on bail bond.

§ 24. The plaintiff in the action shall not be entitled to sue out any scire facias on the bail bond, until,

1st. An execution against the property of the defendant shall have been issued to the sheriff of the county, in which such defendant was originally arrested, and the same shall have been returned by such sheriff, unsatisfied in whole or in part; and,

2d. An execution against the body of the defendant, having at least fifteen days between the test and return day thereof, shall have been issued to the same sheriff, and by him returned, that the defendant could not be found within his county.

How persons arrested and held in custody may be discharged.

§ 25. When any person or persons arrested under any of the provisions of this act shall desire to be discharged from custody, it shall be lawful for such person or persons upon giving notice to the party at whose suit he, she or they were arrested, his agent or attorney, if in the county, if not, upon filing such notice in the office from which

was issued the process, by virtue of which, he, she or they may be held to bail or in custody, of the time and place of such application, to apply to a judge of the district court, supreme court commissioner or justice of the peace, for his, her or their discharge, and upon rendering a schedule of his, her or their property, money and effects, within this territory, and delivering the property over to the proper officer, for the benefit of the plaintiff or plaintiffs, or a sufficient amount thereof to satisfy such debt, and take and subscribe an oath before such judge, supreme court commissioner or justice of the peace, that the schedule contains a full, fair and perfect statement of all the property, money and effects, of which he, she or they are possessed in this territory, the district judge, supreme court commissioner or justice of the peace, if the said affidavit shall not be disproved by other testimony, shall issue an order to the officer in whose custody such person or persons may be, to discharge him, her or them from custody: *Provided*, That none of the provisions of this section shall apply to persons arrested or imprisoned in actions of tort.

AN ACT concerning grand and petit jurors.

§ 1. All persons who are qualified to vote for delegate to congress, Who liable as jurors. shall be liable to be drawn as jurors, except as hereinafter provided.

§ 2. The following persons shall be exempt from serving as jurors: Who exempt. the governor, secretary of the territory, judges of the supreme and district courts, county commissioners, county treasurers, registers of deeds, clerks of the supreme and district courts and clerks of the boards of county commissioners, judges of probate, sheriffs, under sheriffs and deputy sheriffs, coroners, constables, the marshal of the United States and his deputies, and all other officers of the United States, counsellors and attorneys at law, ministers of the gospel, officers of colleges, (not including trustees or directors thereof,) and preceptors and teachers of incorporated academies or universities, and one teacher in each common school, practising physicians and surgeons, and one miller to each grist mill, and one ferryman to each licensed ferry, and all persons more than sixty-five years of age, together with all persons not of sound mind nor discretion, and subject to any bodily infirmity amounting to any disability; and all persons shall be disqualified from serving as jurors who have been convicted of any infamous crime.

§ 3. The board of county commissioners, at their annual meeting in January, shall select from the poll list of the different precincts last returned to the clerk of their board, and shall make out a list of fifty persons, properly qualified to serve as grand jurors, and another list of seventy-two persons, properly qualified to serve as petit jurors, which list, certified and signed by the president of the board which shall make such lists, shall be forthwith delivered to the clerk of the district court: *Provided*, That if in any of the counties in this territory, the county commissioners shall not be able to select the number required by this section, for grand and petit jurors, they shall be authorized to select a less number, and the highest possible. County commissioners how to make list of jurors.

§ 4. If for any cause such lists should not be made and delivered to as aforesaid by the board of county commissioners, at their annual

meeting in January, it shall be their duty to make out and deliver the same as aforesaid, at any regular meeting of said board.

Suitable persons select-
ed.

§ 5. In preparing such lists the said board of county commissioners shall select such persons only as they know, or have good reason to believe, are possessed of the qualifications by law required of persons to serve as jurors, and are of approved integrity, fair character, sound judgment and well informed.

Clerk to put
names in
boxes.

§ 6. On receiving such lists, the clerk of the district court shall write the names of the persons contained therein, on separate pieces of paper, and shall roll up or fold such pieces of paper, each in the same manner as near as may be, so that the name written thereon shall not be visible, and shall deposite such pieces of paper, those containing the names of the grand jurors in one box, and those containing the names of petit jurors in another box, from which they shall be drawn as hereinafter provided.

Jurors, how
drawn.

§ 7. At least fifteen days before the sitting of any court, the clerk of the court, in the presence of the sheriff or under sheriff, and a justice of the peace, shall proceed and draw the names of twenty-three persons from the box containing the names of the grand jurors, to serve as grand jurors at such court, and the names of thirty-six persons from the box containing the names of petit jurors, to serve as petit jurors at such court.

Venires to
be given to
sheriff.

§ 8. The clerk of the district court shall, twelve days at least before the first day of the court, issue and deliver to the sheriff or under sheriff of the county two venires, one for the grand jury and one for the petit jury, under the seal of the court, commanding him to summon the persons so drawn as grand jurors, to appear before the said court, at or before the hour of eleven o'clock, A. M., on the first day of the term thereof, to serve as grand jurors; and the persons so drawn as petit jurors, to appear before the said court, at or before the hour of eleven o'clock, A. M., on the second day of the term thereof, to serve as petit jurors.

Sheriff to
summon
persons
named in ve-
nires.

§ 9. The sheriff or under sheriff shall summon the persons named in such venires to attend such court as grand or petit jurors, as the case may be, at least four days previous to the sitting of such court, by giving personal notice to each person, or by leaving a written notice at his place of residence with some person of proper age. He shall return such venires to the court at the opening thereof, specifying those who were summoned and the manner in which each person was notified.

Penalty for
non-atten-
dance.

§ 10. If any person duly drawn and summoned to attend as juror in any court, shall neglect to attend without any sufficient excuse, he shall pay a fine not exceeding forty dollars, which shall be imposed by the court to which the juror was summoned, and shall be paid into the county treasury.

No. of grand
jury sworn.

§ 11. There shall not be more than twenty-three nor less than sixteen persons sworn on any grand jury; and from the persons summoned to serve as grand jurors and appearing, the court shall appoint a foreman.

In case of de-
ficiency.

§ 12. In case of a deficiency of grand jurors in any court, writs of venire facias may be issued to the proper officer to return forthwith such farther number of grand jurors as may be required.

§ 13. The proper officer shall summon such persons accordingly, who shall be bound forthwith to attend and serve unless excused by the court, in the same manner and subject to the same penalties for neglect as persons duly drawn by the clerk of the district court, and summoned as herein provided. Persons bound to serve.

§ 14. A person held to answer to any criminal charge may object to the competency of any one summoned to serve as a grand juror, before he is sworn, on the ground that he is a prosecutor or complainant upon any charge against such person, or that he is a witness on the part of the prosecution, and has been subpoenaed or been bound in a recognizance as such, and if such objection be established the person summoned shall be set aside. Person accused may object to grand juror, &c.

§ 15. The clerk of the court shall prepare a list of the names of the persons returned as grand jurors, and when the jury is to be empannelled two persons in the list shall be first called, and the following oath shall be administered to them: Jurors how sworn.

"You as grand jurors of this inquest for the body of this county of do solemnly swear (or affirm, as the case may be,) that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the counsel of the United States, your fellows and your own, you shall keep secret; you shall present no man for envy, hatred or malice, neither shall you leave any man unrepresented for love, fear, favor, affection or hope of reward, but you shall present things truly as they come to your knowledge, according to the best of your understanding, so help you God." The other jurors shall then be called in such divisions as the court may deem proper, and the following oath shall be administered to them. "The same oath which your fellows have taken on their part, you and each of you on your behalf, shall well and truly observe and keep, so help you God." Form of oath.

§ 16. The foreman of every grand jury, district attorney or other prosecuting officer, who shall be before them, shall have authority to administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before such jury for the purpose of testifying in any matter of which they may have cognizance; and the foreman shall return to the court a list under his hand of all witnesses who shall have been sworn before the grand jury during the term, and the same shall be filed of record by the clerk. Foreman to administer oaths to witnesses.

§ 17. The grand jury may appoint one of their number to be their clerk to preserve minutes of the proceedings before them, which minutes shall be delivered to the attorney-general or district attorney when the grand jury shall so direct. To return list of witnesses.

§ 18. When the grand jury attending any court shall have been dismissed before the court is adjourned without day, they may be summoned to attend again in the same term, at such time as the court shall direct, for the despatch of any business that may come before them. Grand jury may appoint clerk.

§ 19. No grand juror or officer of the court, if the court shall so order, shall disclose the fact that an indictment for a felony has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on such indictment, until such person has been arrested. Grand juror not to disclose facts, &c.

Not to testify
how jurors
voted, &c.

§ 20. No grand juror shall be allowed to state or to testify in any court in what manner he or any other member of the jury voted on any question before them, or what opinion was expressed by any juror in relation to such question.

Required to
testify how
witness tes-
tified.

§ 21. Members of the grand jury may be required by any court to testify whether the testimony of a witness, examined before such jury, is consistent with or different from the evidence given by such witness before such court; and they may also be required to disclose the testimony given before them by any person upon a complaint against such person for perjury, or upon his trial for such offence.

District at-
torney to at-
tend grand
jury.

§ 22. Whenever required by the grand jury, it shall be the duty of the district attorney of the county to attend them, for the purpose of examining witnesses in their presence, or of giving them advice upon any legal matter, and to issue subpoenas and other process to bring up witnesses.

Jurors when
taken from
bystanders.

§ 23. When by reason of challenge, or otherwise, a sufficient number of jurors duly drawn and summoned cannot be obtained for the trial of any cause, civil or criminal, the court shall cause jurors to be returned from the bystanders or from the county at large, to complete the panel.

Such jurors
how return-
ed.

§ 24. The jurors so returned from the bystanders shall be returned by the sheriff or his deputy, or by a coroner, or by any disinterested person appointed therefor by the court.

Qualifica-
tions.

§ 25. The persons so returned shall be such as are qualified and liable to be drawn as jurors, according to the provisions of law.

Juror may
be examin-
ed.

§ 26. The court shall, on the motion of either party in any suit, examine on oath any person who is called as a juror therein, to know whether he is related to either party or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection; and if it shall appear to the court that the juror does not stand indifferent in the cause, another shall be called and placed in his stead for the trial of that cause.

Proceedings
if not indif-
ferent.

Liability to
be taxed no
cause of
challenge.

§ 27. In indictments and penal actions for the recovery of any sum of money or other thing forfeited, it shall not be a cause of challenge to any juror that he is liable to pay taxes in any county or town which may be affected by such recovery.

Verdict not
to be set
aside for ir-
regularity,
&c.

§ 28. No irregularity in any writ of venire facias, or in the drawing, summoning, returning or empannelling of petit jurors, shall be sufficient to set aside a verdict, unless the party making the objection was injured by the irregularity, or unless the objection was made before the returning of the verdict.

Proceedings
when jury
cannot
agree.

§ 29. When a jury, after due and thorough deliberation upon any cause, shall return into court without having agreed on a verdict, the court may state anew the evidence, or any part of it, and may explain to them anew the law applicable to the case, and may send them out again for further deliberation; but if they shall return a second time without having agreed on a verdict, they shall not be sent out again without their own consent, unless they shall ask from the court some further explanation of the law.

Jury may
view premi-
ses.

§ 30. The jury may, in any case, at the request of either party, be taken to view the premises or place in question, or any property,

matter or thing relating to the controversy between the parties, when it shall appear to the court that such view is necessary to a just decision: *Provided*, The party making the motion shall advance a sum sufficient to defray the expenses of the jury and the officers who attend them in taking the view; which expenses shall be afterwards taxed like other legal costs, if the party who advanced them shall prevail in the suit.

§ 31. When, by a neglect of any of the duties required in this act to be performed by any of the officers or persons herein mentioned, the jurors to be returned shall not be duly drawn and summoned to attend the court, every person guilty of such neglect shall pay a fine not exceeding twenty dollars, to be imposed by the same court, to the use of the county in which the offence is committed. Penalty, when jurors not duly drawn.

§ 32. If any clerk of any court shall be guilty of any fraud, either by practising on a jury box previously to a draft, or in drawing a juror, or in returning into the box the name of any juror which had been lawfully drawn out, and drawing or substituting another in his stead, or in any other way in the drawing of jurors, he shall, on conviction thereof, be punished by a fine not exceeding five hundred dollars, to be paid to the use of the county in which the offence is committed. When clerk guilty of fraud.

§ 33. It shall be the duty of the clerk of the district court, at the end of each term of said court, or within ten days thereafter, to make out a certificate to each juror, certifying the number of days attendance, the number of miles travelled and the amount of compensation due him; which certificate shall be allowed by the board of county commissioners, as other demands against said county: *Provided*, That no juror shall be paid out of the county treasury for any days attendance as a juror in the district court of the territory, for which he may have received, or may be entitled to receive, pay as a juror of the district court of the United States. Clerk to make certificate.

§ 34. If, for any cause, the whole number of any grand or petit jury should fail to be summoned according to the provisions of this act, the judge of the court may direct the clerk to issue a venire to the sheriff, or other officer, directing him forthwith to summon a sufficient number of talesmen for such grand or petit jury. When new venire may be issued.

AN ACT concerning replevin.

§ 1. Whenever any goods or chattels shall have been wrongfully distrained, or otherwise wrongfully taken, or shall be wrongfully detained, an action of replevin may be brought for the recovery thereof, and for the recovery of the damages sustained by reason of such unjust caption or detention, except in the cases hereinafter specified. Action of replevin, when may be brought.

§ 2. Whenever, by any statute, executors or other persons suing in the right of another are authorized to maintain actions of trespass, for any personal property wrongfully taken, such persons may maintain actions of replevin for such property. When executors to maintain action.

§ 3. Whenever an action of replevin shall be brought for the recovery of goods or chattels distrained for any cause, it shall be laid in the county in which the distress was made, and not elsewhere; in other cases the action shall be laid and tried in like manner as actions of trespass for injuries to personal property. What county action to be laid in.

When action
not to lie.

§ 4. No replevin shall lie for any property taken by virtue of any warrant for the collection of any tax, in pursuance of any statute of this territory.

Not to lie for
goods taken
in attach-
ment or exe-
cution.

§ 5. No replevin shall lie at the suit of the defendant in any execution or attachment to recover goods or chattels seized by virtue thereof, unless such goods and chattels are exempted, by law, from such execution or attachment. Nor shall a replevin lie for such goods or chattels at the suit of any other person, unless he shall, at the time, have a right to reduce into his possession the goods taken.

Commenced
by writ.

§ 6. Actions of replevin shall hereafter, in all cases, be commenced by writ, which shall be issued out of the court in which it shall be made returnable, and shall be substantially in the following form :

Form of
writ.

The United States, to the sheriff, &c.

Whereas A. B. complains that C. D. has taken, and does unjustly detain, (or does unjustly detain, as the case may be,) (here give a particular description of the goods and chattels to be replevied, and of the value thereof,) therefore you are commanded, that if the said A. B. shall give you security, as required by law, to prosecute his said complaint, and to return the aforesaid goods and chattels, if return thereof shall be adjudged, and to pay all such sums of money as may be recovered against him hereupon, that you cause the same goods and chattels to be replevied and delivered to the said A. B. without delay ; and also, that you summon the said C. D. to appear before the judge of the district court, at, &c. on the, &c. (some day on which writs in personal actions may be made returnable) to answer the said A. B. in the premises. Witness, &c.

When writ
shall not be
issued.

§ 7. Such writ shall not be issued, in any case, unless the following provision is complied with : An affidavit must be made by the plaintiff in the action, or by some one in his behalf, stating that the plaintiff in such action is the owner of the property described in the writ, or that he is then lawfully entitled to the possession thereof, and that the same has not been taken for any tax levied by virtue of any law of this territory, nor seized under any execution or attachment against the goods and chattels of such plaintiff liable to execution. The affidavit must be sworn, before some proper officer, and must be filed with the clerk. After the sheriff has taken the property, the plaintiff in the action, or some one in his behalf, shall execute a bond to the sheriff, or other officer to whom the writ is directed, with the addition of his name of office, with sufficient sureties, who shall swear that they are each worth the amount of the penalty of the bond, over and above all debts, or who shall be accepted by the defendant, in a penalty at least double the value of the property specified in the writ ; which value shall be ascertained by the oath of one or more disinterested witnesses, to be sworn and examined by the sheriff. Such bond shall be conditioned that the plaintiff will prosecute the suit to effect, and without delay ; and that if the defendant recover judgment against him in the action he will return the same property, if return thereof be adjudged, and will pay to the defendant all such sums of money as may be recovered against him, by such defendant in the said action, for any cause whatever.

Writ, how
served and
executed.

§ 8. Upon the receipt of the bond above required, the sheriff shall forthwith proceed to deliver possession of the property named therein

to the plaintiff or his authorized agent, and to summon the defendant according to the tenor of the writ.

§ 9. The summons shall be served on the defendant by delivering to him personally, if he can be found, a brief note in writing, signed by the officer serving the same, and stating the name of the plaintiff in the writ, and of his attorney, if the writ be prosecuted by one, the court from which it issued, and the time when and the place where the defendant is required to appear; if he cannot be found, it may be served by leaving at his usual place of abode, with his wife, or with some person of proper age, a like note in writing.

*Summons,
how served.*

§ 10. If the property to be replevied, or any part thereof, be secured or concealed in any dwelling-house or other building or enclosure, the officer shall publicly demand deliverance thereof, and if the same be not delivered by the defendant or some other person, he shall cause such house, building or enclosure to be broken open, and shall make replevin according to the writ, and if necessary he shall take to his assistance the power of his county.

*Officer may
break open
building, &c.*

§ 11. If the goods and chattels, specified in any writ of replevin, have not been delivered to the plaintiff, he may proceed in the action for the recovery of the said goods and chattels, or the value thereof.

*Plaintiff to
recover va-
lue of prop-
erty.*

§ 12. The sheriff shall return the writ at or before the return day thereof, and shall transmit therewith the bond to him delivered.

*Sheriff to
return writ
and bond.*

§ 13. The sheriff shall state in his return in what manner he has executed the writ, and if the goods and chattels, specified therein shall not have been replevied, he shall state in such return, the cause of his omission to make deliverance thereof.

*Return what
to contain.*

§ 14. If the sheriff return to the writ of replevin that the defendant has been duly summoned in either of the modes herein before prescribed, the clerk of the court shall thereupon enter the appearance of such defendant, and thereafter proceedings shall be had against such defendant as if he had actually appeared.

*Defendant's
appearance to
be entered.*

§ 15. The plaintiff shall declare within the same time, and in case he shall neglect so to do, shall be liable to the like judgment of discontinuance as in personal actions, and upon filing a declaration, the plaintiff shall be entitled to the like rule to plead, and notice shall be given thereof in like manner as in personal actions.

*Plaintiff,
when to de-
clare.*

§ 16. Where the original taking of the goods is not complained of, but the action is founded on the wrongful detention of such goods, the declaration shall be conformed to the writ, and shall allege with requisite certainty of time, place and value, that the defendant received the property described in the writ from the plaintiff, or from some other person, (naming him,) to be delivered to the plaintiff, when thereunto afterwards requested; and that the defendant, although requested so to do, has not delivered the same to the plaintiff, but refuses so to do, and detains the same property to the damage of the plaintiff; and where the action is founded upon the wrongful taking and detention of the property, but such property, for any reason, shall not have been replevied and delivered to the plaintiff, the declaration shall not only allege such wrongful taking, but shall also allege that the defendant continues to detain such property.

*What decla-
ration to al-
lege, &c.*

§ 17. It shall not be necessary for the plaintiff to state in his declaration, a place certain, within the town or village, as that where

the property was taken, except where the action shall be brought for the recovery of goods and chattels distrained.

Plea of general issue, what to be, and effect.

§ 18. When the wrongful taking of the property described in the declaration is complained of therein, the plea of the general issue shall be as heretofore, that the defendant did not take the goods and chattels described in the declaration, or any of them, in manner and form as the plaintiff has alleged; and such plea shall put in issue not only the taking of such goods and chattels, but such taking in the place stated, where the place is material.

1b.

§ 19. When the action is founded on the wrongful detention of the goods, and the original taking is not complained of, the plea of the general issue shall be, that the defendant does not detain the goods and chattels specified in the declaration, or any part thereof, in manner and form as therein alleged; and such plea shall put in issue, not only the detention of such goods and chattels, but also the property of the plaintiff therein.

What defendant may avow when property distrained.

§ 20. Whenever a distress shall be made upon any lands or tenements for any rents or services issuing out of such lands or tenements, and a replevin shall be brought for the property distrained, the defendant may avow or make cognizance generally, that the plaintiff in replevin, or other tenant of the lands or tenements whereon such distress was made, enjoyed the same, under a grant or demise, or by any other title, at a certain rent, or by certain services during the time wherein the rent distrained for was incurred, which rent was then and still remains due; or, that the place where the distress was taken was parcel of certain tenements, for which the rent or service distrained for, was, at the same time of such distress, and still remains due, without further setting forth the grant, tenure, demise or title of the landlord or lessor, and without naming any person certain, as the tenant of such lands or tenements.

What to plead when beasts distrained, &c.

§ 21. In an action of replevin, for beasts or chattels, distrained for doing damage, it shall be a good justification for the defendant to plead, avow or make cognizance, that he or the person by whose command he acted, was lawfully possessed of the lands and tenements upon which the distress was made, and that the beasts or chattels distrained, were at the time of such distress, doing damage therein, without setting forth a title to such lands or tenements.

Who may defend in certain cases.

§ 22. No aid-prayer shall be allowed in any action of replevin hereafter to be brought; but any person having an estate in the lands or tenements upon which the distress in question was made, may upon special cause shewn to the court, and on such terms as it shall think equitable, be made a co-defendant in the action, or be permitted to defend the same separately, as the case may require.

Notice given of matters to be pleaded.

§ 23. With the plea, denying the taking or detention of the property claimed, the defendant may give notice of any matters, which if properly pleaded by avowry, cognizance or plea, would be a bar to the action, and which, if the goods have been replevied, would entitle him to a return thereof; and he may give such matters in evidence on the trial, in the same manner, and [with] the like effect, as if the same had been so pleaded.

Avowry, &c. how answered.

§ 24. The plaintiff may plead in answer to any avowry or cognizance, as many several matters as he shall think necessary for his defence.

§ 25. If upon the trial of the cause the verdict be in favor of the plaintiff, the same jury shall assess the damages which he has sustained by the unjust taking or detention of the property replevied; but if the judgment pass for the plaintiff by default, or upon an issue of law, a writ of inquiry shall be awarded to the sheriff of the proper county, to ascertain his damages for such caption and detention.

Damages assessed by jury.

Writ to issue.

§ 26. It shall also be the duty of the jury upon such trial of the cause, or on the execution of such writ of inquiry, as the case may be, to assess the value of the goods and chattels specified in the declaration.

Value of property assessed.

§ 27. If the goods and chattels specified in the declaration, shall not have been replevied and delivered to the plaintiff, such plaintiff, in case he shall recover judgment upon the whole record, shall be entitled, in addition to his judgment for damages and costs, to a further judgment, that such goods and chattels be replevied and delivered to him without delay, or in default thereof that such plaintiff do recover from the defendant the value of such goods and chattels, as the same shall have been assessed by the jury on the trial or upon the writ of inquiry.

Judgment, how given.

§ 28. The execution to be issued upon such judgment, shall command the sheriff to levy the plaintiff's damages and costs of the goods and chattels, lands and tenements of the defendant as in other executions against property, and also to replevy the goods and chattels described in the declaration, which shall also be specified in the execution, and to deliver them to the plaintiff if they can be found within his county; and if the same cannot be so found, then that he levy the value of such goods and chattels, specifying the same, together with the aforesaid damages and costs of the goods and chattels, lands and tenements of the defendant as above provided.

Execution, what to command sheriff.

§ 29. The sheriff shall proceed in the same manner to collect any moneys directed to be collected upon such execution, as upon executions against property in personal actions; and he shall possess the same powers in respect to the replevying of the property described therein, as are herein provided upon the execution of writs of replevin. If the goods and chattels described in the execution are replevied and delivered to the plaintiff, they shall be irrepleviable by the defendant.

How to be served.

§ 30. If the property specified in the writ has been delivered to the plaintiff, and the defendant recover judgment by discontinuance or nonsuit, such judgment shall be that the defendant have return of the goods and chattels replevied, unless he shall elect to waive such return pursuant to any of the provisions hereinafter contained; and also that he recover the damages sustained by him by reason of the detention of such goods and chattels, which damages shall be assessed by a writ of inquiry.

Judgment, what to be in certain cases

§ 31. Whenever a defendant shall obtain judgment by default or in any other manner, after having pleaded any matter which if admitted by the plaintiff would be sufficient in law to entitle such defendant to a return of the property replevied, he shall be entitled to the like judgment as provided in the last section.

§ 32. The defendant, whenever he shall be entitled to a return of the property replevied, instead of taking judgment for such return as above provided, may take judgment for the value of the property replevied, in which case such value shall be assessed by the jury on the trial, or by a writ of inquiry, as the case may require. But this

How def't may take judgment in certain cases.

section shall not apply to cases where the property replevied has been distrained.

How to proceed when property replevied has been distrained for rent.

§ 33. If the property replevied shall have been distrained for rent, the defendant, instead of taking judgment for a return thereof, may in the following cases proceed as follows :

1st. If the defendant shall not have made an avowry or cognizance, and therein set forth the arrears of rent, he may make a suggestion in the nature of an avowry or cognizance, for the rent in arrear, and the court shall thereupon award a writ of inquiry to the sheriff of the proper county, to ascertain the sum in arrear at the time of such distress taken, and also the value of the property distrained ; and upon the return of the inquisition taken by such sheriff, the defendant shall have judgment to recover against the plaintiff the arrearages of such rent, in case the property distrained shall amount to that value ; and in case it shall not amount to that value, then so much as the value of the property so distrained shall amount to, for which sum he shall have execution against the property or the person of the plaintiff, as in other cases.

2d. If judgment shall be given for the defendant upon demurrer, he may make the like suggestion of the arrears of rent, if the same shall not already have been pleaded by him ; and the court shall award a like writ of inquiry, upon which the same proceeding shall be had to judgment and execution as above provided.

3d. If the plaintiff shall be nonsuited after issue joined, or if the verdict shall be given against such plaintiff, then the jurors that are empannelled to try such issue, shall, at the prayer of the defendant, inquire concerning the amount of the rent in arrear and the value of the property distrained, and thereupon the defendant shall have judgment and execution for such arrearages, or so much thereof as the property shall amount to as above provided.

If the value of the property distrained shall not be found to be equal to the arrears of rent distrained for, the party to whom such arrears were due, his executors, administrators or assigns may from time to time distrain again for the residue of such arrears.

Ib. when for beasts distrained doing damage.

§ 34. If the property replevied shall be beasts or chattels, distrained from doing damage, the defendant shall take judgment to recover the damages sustained by him by the injury for which such beasts or chattels were distrained, and the like proceedings shall be had to ascertain such damages and such value, and the like judgment and execution shall be had thereupon as in the last section are provided.

May proceed against plaintiff, &c.

§ 35. Notwithstanding the defendant may have proceeded under either of the two last sections, he shall not be precluded from resorting, as the assignee of the sheriff, to his remedy against the plaintiff and his sureties upon the bond executed by them to the sheriff.

Notice of execution of writ of inquiry to be given.

§ 36. Whenever a writ of inquiry shall be issued, pursuant to any provision contained in this act, the party suing out such writ shall give the adverse party, in case he shall have appeared in the cause in person, or by attorney, sufficient notice of the execution of such writs, of inquiry.

Judgment, what to be in certain cases.

§ 37. If the property specified in the writ has not been replevied and delivered to the plaintiff, and the defendant recover judgment, such judgment shall be for costs merely, including the fees of the sheriff and jury, upon a claim of property, if one was interposed.

§ 38. Every judgment recovered in the action of replevin, whether in favor of the plaintiff or defendant, for any damages or costs, or for any other sum of money, shall be docketed in the same manner, and shall have the like effect, as a charge upon the real estate and chattels real, of the party against whom it is recovered, as judgments in personal actions.

How to be docketed.

§ 39. Whenever judgment shall pass against the plaintiff in replevin, whether by default or otherwise, and a return of the property replevied is awarded, no writ of second deliverance shall be allowed, nor shall any second or other writ of replevin be brought for the same cause; but the plaintiff in replevin shall not thereby be barred from bringing an action of trespass or trover for the same property, unless the judgment in the action of replevin shall have passed against him on the merits.

Writ not to issue when return of property awarded.

§ 40. The writ of withernam, and all writs of second deliverance, are hereby abolished.

Writ of withernam abolished.

§ 41. If any writ of return or other execution issued in favor of the defendant in the action shall be returned unsatisfied, in whole or in part, such defendant or his representative, may have an action upon the bond executed by the plaintiff and his sureties, to recover the value of the property replevied, and the moneys, damages and costs, awarded to such defendant as the case may be, and such bond shall be assigned to such defendant or his representatives, on their request.

Defendant, when to have action on bond.

§ 42. In such action, the plaintiff shall assign breaches of the condition of such bond as in other cases, and the return of the sheriff to the execution issued in the action of replevin, shall be evidence of such breach; the amount recovered in such action of replevin, shall be the measure of the damages, if the value of the property replevied shall have been so recovered, and if not so recovered, such value shall be added to the amount of the damages and costs recovered in the action of replevin, and together therewith, shall form the measure of the damages to be assessed.

What to be evidence of breach of condition, &c.

§ 43. In any action prosecuted on such bond given by the plaintiff, in replevin for the deliverance of any property distrained for rent or for doing damage, the defendant may show in mitigation of the damages, the amount of the plaintiff's claim in the action of replevin, for such rent or for such damage; and if such amount, with interest, be less than the value of the property replevied, a corresponding deduction shall be made from such value.

What to show in mitigation of damages.

§ 44. Whenever an action of replevin shall be brought by or against the sheriff of any county, the writ, and all process in the cause, shall be awarded to and executed by the coroner of the county; but executions therein shall be awarded and executed as in other such cases.

Action of replevin against sheriff, &c.

AN ACT concerning set-offs.

§ 1. In the following cases, and under the following circumstances, a defendant may set off demands which he has against the plaintiff:

In what cases set-off is allowed.

1. It must be a demand arising upon judgment or upon contract, express or implied, whether such contract be written or unwritten,

sealed or without seal; and if it be founded upon a bond or other contract having a penalty, the sum equitably due by virtue of its condition only, shall be set off.

2. It must be due to him in his own right, either as being the original creditor or payee, or as being the assignee and owner of the demand.

3. It must be a demand for real estate sold, or for personal property sold, or for money paid, or services done, or if it be not such a demand, the amount must be liquidated, or be capable of being ascertained by calculation.

4. It must have existed at the time of the commencement of the suit, and must then have belonged to the defendant.

5. It can be allowed only in actions founded upon demands, which could themselves be the subject of set-off, according to law.

6. If there be several defendants, the demands set off must be due to all of them jointly.

7. It must be a demand existing against the plaintiff in the action, unless the suit be brought in the name of the plaintiff who has no real interest in the contract upon which the suit is founded, in which case no set-off of a demand against the plaintiff shall be allowed, unless as hereinafter specified.

8. If the action be founded upon a contract other than a negotiable promissory note or bill of exchange, which has been assigned by the plaintiff, a demand existing against such plaintiff, or any assignee of such contract, at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, may be set off to the amount of the plaintiff's debt, if the demand be such as might have been set off against such plaintiff, or such assignee, while the contract belonged to him.

9. If the action be upon a negotiable promissory note or bill of exchange, which has been assigned to the plaintiff after it became due, a set-off to the amount of the plaintiff's debt may be made of a demand existing against any person or persons who shall have assigned or transferred such note or bill after it became due, if the demand be such as might have been set off against the assignor, while the note or bill belonged to him.

10. If the plaintiff be a trustee for any other, or if the suit be in the name of the plaintiff who has no real interest in the contract upon which the suit is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

Notice to be given.

§ 2. To entitle a defendant to a set-off, he must plead or give notice of the same.

To be given with plea.

§ 3. Such notice must be given, together with the plea of the general issue, in those actions in which such issue may be pleaded, or with the plea of nul tiel record to an action of debt on judgment, or in the action of covenant, with a plea denying the execution of the instrument on which the plaintiff may have declared.

Judgment how rendered when

§ 4. If the amount of the set-off duly established, be equal to the plaintiff's debt or demand, judgment shall be entered that the plain-

tiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only. set-offs established.

§ 5. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered for the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff, of record, when the contract, which is the subject of the suit, shall have been assigned before the commencement of such suit, nor for any balance due from any other person than the plaintiff in the action. 1b.

§ 6. In suits brought by executors and administrators, demands existing against their testators or intestates, and belonging to the defendant at the time of their death, may be set off by the defendant in the same manner as if the action had been brought by and in the name of the deceased. Set-offs allowed against executors.

§ 7. Whenever a set-off is established in a suit brought by executors or administrators, if judgment be rendered against them, the judgment shall be against them in their representative character, and shall be evidence of a debt established to be paid in the course of administration; but execution shall not issue thereon, until directed by the judge of probate who granted letters testamentary or of administration. Judgment how rendered against executors.

§ 8. In actions against executors and administrators, and against trustees and others, sued in their representative character, the defendants may set off demands belonging to their testators or intestates, or those whom they represent, in the same manner as the persons so represented would have been entitled to set off the same, in an action against them. Certain demands may be set off.

AN ACT requiring certain officers to keep their offices at the county seat.

§ 1. That the sheriff, the register of deeds, the clerk of the district court, and the clerk of the board of county commissioners of each county of this territory, are hereby required to keep their offices at the county seat of their respective counties; and if any of said officers shall neglect to comply with this provision, he shall forfeit for each and every day's neglect, the sum of ten dollars. Sheriff, Register, &c.

AN ACT concerning arbitrations.

§ 1. All controversies which might be the subject of a personal action at law or of a suit in equity, may be submitted to the decision of one or more arbitrators in the manner provided in this act. What may be submitted to arbitrators.

§ 2. No such submission shall be made respecting the claim of any person to any estate, in fee or for life to real estate; but any claim to an interest for a term of years, or for one year or less, in real estate, and controversies respecting the partition of lands between joint tenants, [or tenants] in common, or concerning the boundaries of lands, or concerning the admeasurement of dower, may be so submitted to arbitration.

§ 3. The parties shall appear in person or by their lawful agents or attorneys, before any justice of the peace, and shall there sign and acknowledge an agreement in substance, as follows: Agreement to submit to be signed, &c.

Form of agreement. Know all men, that of and of have agreed to submit the demand, a statement where- of is hereto annexed, (and all other demands between them, as the case may be,) to the determination of and the award of whom, or the greater part of whom, being made and reported within from this day, to the district court for the county of the judgment thereon shall be final ; and if either of the parties shall neglect to appear before the arbitrators, after due notice given them of the time and place appointed for hearing the parties, the arbitrators may proceed in his absence. Dated this day of in the year

Justice to subjoin certificate. And the justice shall subjoin to the said agreement his certificate, in substance, as follows :

ss.

Then the above named

and personally appeared, (or the above named personally, and the said by the said his attorney appeared, as the case may be,) and acknowledged the above instrument by them signed, to be their free act. Before me justice of the peace.

Agreement to submit what to contain.

§ 4. If any specific demand is submitted to the exclusion of others, the demand submitted shall be set forth in the statement annexed to the agreement, otherwise it shall not be necessary to annex any statement of a demand, and the words in the agreement relating to such statement may be omitted, and the submission may then be of all demands between the parties, or of all demands which either of them has against the other, or the submission may be varied in this respect, in any other manner according to the agreement of the parties.

Submission not to be revoked.

§ 5. Neither party shall have power to revoke a submission made as herein provided, without the consent of the other ; and if either of them shall neglect to appear before the arbitrators after due notice, the arbitrators may, nevertheless, proceed to hear and determine the cause upon the evidence produced by the other party, as provided in the agreement of submission.

Arbitrators may proceed ex-parte.

To appoint a time and place for the hearing.

§ 6. The arbitrators thus selected shall appoint a time and place for the hearing, and shall adjourn the same from time to time as may be necessary ; and on the application of either party, and for good cause, they may postpone such hearing to a time not extending beyond the day fixed in such submission for rendering their award.

May adjourn.

To be sworn.

§ 7. Before proceeding to hear any testimony, the arbitrators shall be sworn by any officer authorized to administer oaths, faithfully and fairly, to hear and examine the matters in controversy, and to make a just award according to law and evidence, to the best of their understanding.

Award made after time fixed by parties not to have effect.

§ 8. The time within which the award shall be made and reported, may be varied according to the agreement of the parties ; and no award made after the time so agreed upon shall have any legal effect or operation, unless made upon a recommitment of the award by the court to which it is reported.

To be in writing.

§ 9. To entitle any award to be enforced according to the provisions of this act, it must be in writing, subscribed by the arbitrators making the same, and attested by a subscribing witness.

§ 10. The award shall be delivered by one of the arbitrators to the clerk of the court designated in the agreement, or shall be enclosed and sealed by them, and transmitted to the clerk, and shall remain sealed until opened by the court. To be delivered to clerk of court.

§ 11. The court to which the award is returned shall have cognizance thereof in the same manner, and the same proceedings shall be had thereon, as if it had been made by referees appointed by a rule of the same court. Court to have cognizance of award.

§ 12. The award may be accepted or rejected by the court for any legal and sufficient reason, or it may be recommitted to the same arbitrators for a rehearing by them; and when an award is accepted and confirmed by the court, judgment shall be rendered thereon in the same manner as upon a like award made by referees appointed by a rule of the court, and execution shall issue accordingly. Award may be accepted, rejected or recommitted.

§ 13. Any party complaining of such award may move the court designated in such submission, to vacate the same upon either of the following grounds: On what grounds party may move court to vacate award.

1st. That such award was procured by corruption, fraud or other under [undue] means.

2d. That there was evident partiality or corruption in the arbitrators, or either of them.

3d. That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear any evidence, pertinent and material to the controversy, or any other misbehaviour by which the rights of any party shall have been prejudiced.

4th. That the arbitrators exceeded their powers, or that they so imperfectly executed them, that a mutual, final and definite award on the subject matter submitted was not made.

5th. That the award was contrary to law and evidence.

§ 14. Any party to such submission may also move the court designated therein, to modify or correct such award in the following cases: In what cases party may move court to alter award.

1st. Where there is an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in such award.

2d. Where the arbitrators shall have awarded upon some matter not submitted to them, not affecting the merits of the decision upon the matters submitted.

3d. Where the awards shall be imperfect in some matter of form not affecting the merits of controversy, and where if it had been a verdict, such defect could have been amended or disregarded by the court according to the provisions of law.

§ 15. The award may be returned at any term or session of the court, that shall be held within the time limited in the submission, and the parties shall attend at every such term or session, without any express notice for that purpose, in like manner as if an action for the same cause were pending between them in the same court; but the court may require actual notice to be given to either party when it shall appear to them necessary or proper, before they proceed to act upon the award. Award when to be returned to court.

§ 16. Upon such award being confirmed or modified, the court shall render judgment in favor of the party to whom any sum of Judgment how rendered.

money or damages shall have been awarded, that he recover the same, and if the award shall have ordered any act to be done by either party, judgment shall be entered that such act be done according to such order; the costs of proceedings shall be taxed as in suits, and if no provision for the fees and expenses of the arbitrators shall have been made in the award, the court shall make a suitable allowance.

Costs how taxed.

Record of judgment how made.

§ 17. A record of such judgment shall be made, commencing with a memorandum reciting the submission, then stating the hearing before the arbitrators, their award, the proceedings of the court thereupon, in modifying or confirming such award, and the judgment of the court for the recovery of the debt or damages awarded, and that the parties perform the acts ordered by the award, and [for the recovery of the costs allowed.

Record how filed and docketed, &c.

Execution to issue.

§ 18. Such record shall be filed and docketed as records of judgments in other cases, shall have the same force and effect in all respects, be subject to all the provisions of law in relation to judgments in actions, and may in like manner be removed and reversed by writ of error, and execution shall issue thereupon.

Arbitrators may make award concerning costs.

§ 19. If there is no provision in the submission concerning the costs of the proceedings, the arbitrators may make such award respecting the costs as they shall judge reasonable, including therein a compensation for their own services; but the court may reduce the sum charged for the compensation of the arbitrators if it shall appear to them unreasonable.

Court may enforce judgment.

§ 20. Where by such judgment any party shall be required to perform any act other than the payment of money, the court rendering such judgment shall enforce the same by rule, and the party refusing or neglecting to perform and execute such act, or any part thereof, shall be subject to all the penalties of contemning an order of such court.

AN ACT to prescribe the mode of proceeding in chancery.

Jurisdiction of district courts.

§ 1. The district courts of the territory shall have jurisdiction in cases properly cognizable by a court of chancery, in which a plain, adequate and complete remedy cannot be had at law.

Proceedings how regulated.

§ 2. The proceedings in the courts aforesaid, where they are not regulated by the statutes of this territory, shall be regulated by the judges thereof, conforming to the usages of courts of chancery.

When suits to be dismissed.

§ 3. The court shall dismiss every writ [suit] in chancery concerning property, where the matter in dispute, exclusive of costs, does not exceed the value of one hundred dollars, with costs in favor of the defendant.

Bills to compel discovery of property, when filed.

§ 4. Whenever an execution against the property of a defendant shall have been issued on a judgment at law, and shall have been returned unsatisfied, in whole or in part, the party suing out such execution may file a bill in chancery against such defendant, and any other person, to compel the discovery of any property or thing in action, belonging to the defendant, and of any property, money or thing in action [due,] or held in trust for him; and to prevent the transfer of any such property, money or thing in action, or the payment or delivery thereof to the defendant, except where such

trust has been created by, or the fund so held in trust has proceeded from, some person other than the defendant himself.

§ 5. In suits for the payment or recovery of money, set-offs shall be allowed in the same manner, and with the like effect as in actions at law. Set-offs, how allowed.

§ 6. Whenever any bill, answer or other proceeding, filed in the court of chancery, shall satisfactorily appear to the judge to have been made unnecessarily prolix for the purpose of increasing the costs, it shall be the duty of the judge to order the solicitor or counsel, by whom such bill, answer or other proceeding shall have been drawn, to pay the costs occasioned by such unnecessary prolixity to the party injured thereby. Court may order counsel to pay costs in certain cases.

§ 7. A bill of discovery may be filed, and the defendant shall be compelled to answer such bill, where the defendant is charged of having given to another person a warrant of attorney to enter up a judgment, or with having confessed or suffered any judgment, purporting to be for a sum or debt due, when in fact nothing, or only a part of the sum mentioned in such warrant of attorney or judgment, is due, with intent to defraud the just creditors of such defendant, or to place the property of the defendant out of the reach of his creditors, or to hold the same on some secret trust or confidence, or for the benefit of such defendant. When bill of discovery may be filed.

§ 8. No answer made to any bill filed under the last section shall be read in evidence against the defendant, on the trial of any indictment for the fraud charged in the bill. Answer to such bill not to be used.

§ 9. Whenever any will of real or personal estate shall be lost or destroyed, by accident or design, the court of chancery shall have the same power to take proof of the execution and validity of such will, and to establish the same, as in the case of lost deeds. Power of court when will lost.

§ 10. Whenever any infant shall be seised or possessed of any lands, by way of mortgage, or in trust only for others, the court, on the petition of the guardian of such infant, or of any person in any way interested, may compel such infant to convey and assure such lands to any other person, in such manner as the said court shall direct. When infant seised of lands compelled to convey.

§ 11. Every conveyance or assurance, made pursuant to such order, shall be as good and effectual, in the law, as if the same were made by such infant when of lawful age. Conveyance to be valid.

§ 12. The court of chancery shall have power to decree and compel a specific performance, by any infant heir or other person, of any bargain, contract or agreement, made by any party who may die before the performance thereof, on petition of the executors or administrators of the estate of the deceased, or of any person interested in such bargain, contract or agreement, and on hearing all parties concerned, and being satisfied that the specific performance of such bargain, contract or agreement ought to be decreed or compelled. Court may compel performance of contract.

§ 13. Any infant seised of any real estate, or entitled to any term for years in any lands, may, by his next friend, or by his guardian, apply to the court, for the sale or disposition of his property, in the manner hereinafter directed. Infant may apply to sell property.

§ 14. On such application the court shall appoint one or more suitable persons guardians of such infant, in relation to the proceedings on such application. Guardian to be appointed.

To give
bond.

§ 15. The guardians shall give bond to the infant, to be filed with the court, in such penalty, with such sureties, and in such form as the court shall direct, conditioned for the faithful performance of the trust reposed, for the paying over, investing and accounting for all moneys that shall be received by such guardians, according to the order of any court having authority to give directions in the premises, and for the observance of the orders and directions of the court, in relation to the said trust.

Bond to be
prosecuted.

§ 16. If such bond be forfeited, the court shall direct it to be prosecuted, for the benefit of the party injured.

Manner of
proceeding.

§ 17. Upon the filing of such bond, the court may proceed in a summary manner, by reference to a master, to inquire into the merits of such application.

Court may
order letting
or sale of
property.

§ 18. Whenever it shall appear, satisfactorily, that a disposition of any part of the real estate of such infant, or of his interest in any term for years, is necessary and proper, either for the support and maintenance of such infant or for his education; or that the interest of such infant requires, or will be substantially promoted by such disposition, on account of any part of his said property being exposed to waste and dilapidation, or on account of its being wholly unproductive, or for any other peculiar reasons or circumstances, the court may order the letting for a term of years, the sale or other disposition of such real estate or interest to be made, by such guardian or guardians, so appointed, in such manner and with such restrictions as shall be deemed expedient.

Limitation of
last section.

§ 19. But no real estate, or term for years, shall be sold, leased or disposed of, in any manner, against the provisions of any last will, or of any conveyance, by which such estate or term was devised or granted to such infant.

Agreement
of sale to be
reported to
court, &c.

§ 20. Upon an agreement for a sale, leasing or other disposition of such property being made, in pursuance of such order, the same shall be reported to the court, on the oath of the guardian making the same; and if it be confirmed, a conveyance shall be executed under the directions of the court.

Sale, &c. by
guardian, ef-
fectual.

§ 21. All sales, leases, dispositions and conveyances, made in good faith by the guardian, in pursuance of such orders, when so confirmed, shall be valid and effectual, as if made by such infant when of full age.

Infant deemed
ward of
court, &c.

§ 22. From the time of such application to the court the infant shall be considered a ward of the court, so far as relates to such property, its proceeds and income; and the court shall make order for the application and disposition of the proceeds of such property, and for the investment of the surplus belonging to such infant, so as to secure the same for the benefit of such infant; and shall direct a return of such investment and disposition to be made, on oath, as soon as may be, and shall require accounts to be rendered periodically, by any guardian or other person who may be entrusted with the disposition of the income of such proceeds.

Effect of
sale.

§ 23. No sale made as aforesaid, of the real estate of any infant, shall give to such infant any other or greater interest or estate in the proceeds of such sale than he had in the estate so sold; but the said proceeds shall be deemed real estate, of the same nature as the property sold.

§ 24. If the real estate of any infant, or any part of it, shall be subject to dower, and the person entitled thereto shall consent in writing to accept of a gross sum in lieu of such dower, or the permanent investment of a reasonable sum, in such manner as that the interest thereof be made payable to the person entitled to the said dower during life, the court may direct the payment of such sum in gross, or the investment of such sum as shall be deemed reasonable, and shall be acceptable to the person entitled to such dower in manner aforesaid; which sums so paid or invested, shall be taken out of the proceeds of the sale of the real estate of such infant.

Power of court when estate of infant subject to dower &c.

§ 25. Before any such sum shall be paid, or such investment made, the court shall be satisfied that an effectual release of such right of dower has been executed.

Release of dower to be made.

§ 26. The district judge shall have the care and custody of all insane persons, or persons who shall be incapable of conducting their own affairs, in consequence of habitual drunkenness, and of their real and personal estates, so that the same shall not be wasted or destroyed; and shall provide for their safe keeping and maintenance, and for the maintenance of their families and the education of their children, out of their personal estates, and the rents and profits of their real estates respectively.

Who to have care of insane persons, &c.

§ 27. Whenever the overseers of the poor of any town or county in this territory discover any person resident therein to be an habitual drunkard, having property to the amount of two hundred and fifty dollars, which may be endangered by means of such drunkenness, it shall be their duty to make application to the court for the exercise of its powers and jurisdiction.

Application to court in case of drunkards.

§ 28. On the presenting of such application, it shall be referred to a master in chancery, or to the clerk of the court, to inquire into and report upon the matters therein contained; whose duty it shall be to examine into the truth of the representations made, to hear all parties interested in such property, and to report thereon with all convenient speed.

Proceedings in such case.

§ 29. If upon the coming in of the report and an examination of the matter, it shall appear to the court that the personal estate of the insane person, or other person above specified, is not sufficient for the payment of his debts, and that the same has been applied to that purpose as far as the circumstances of the case rendered proper, and [an] order shall be entered, directing the mortgage, leasing or sale of the whole, or such part of the said real estate as may be necessary to discharge the said debts.

Court may order sale, &c. of estate

§ 30. When the personal property, and the rents, profits and income of the real estate of any such insane person, or other person above specified, shall be insufficient for his maintenance, or that of his family, or for the education of his children, a similar application may be made by his committee or guardians, to the judge or to the court having jurisdiction, for authority to mortgage or sell the whole, or so much of the real estate as shall be necessary for that purpose; upon which the same reference and proceedings shall be had, and a like order shall be entered, as herein before directed.

When application in case of insane person.

§ 31. In the case last mentioned, the court shall direct the manner in which the proceeds of such sale shall be secured, and the income or produce thereof appropriated.

Disposition of proceeds of sale.

Time and manner of sale.

§ 32. The court shall give such orders respecting the time and manner of any sale herein authorized, as shall be deemed proper; and no conveyance in pursuance of any sale shall be executed until the sale shall have been reported on the oath of the committee appointed for that purpose, and confirmed by the court directing the same.

When insane person seised of estate by mortgage, &c.

§ 33. Whenever any such insane person, or other person above specified, shall be seised or possessed of any real estate, by way of mortgage, or as a trustee for others in any manner, his committee or guardian may apply to the court for authority to convey and assure such real estate to any other person entitled to such conveyance or assurance, in such manner as the court shall direct; upon which a reference, and the like proceedings shall be had as in the case of an application to sell real estate as aforesaid; and the court, upon hearing all the parties interested, may order such conveyance or assurance to be made. On the application of any person entitled to such conveyance or assurance, by bill or petition, the committee or guardian may be compelled by the court of chancery, on a hearing of all parties interested, to execute such conveyance or assurance.

Conveyance, &c. when valid.

§ 34. Every conveyance, mortgage, lease and assurance, made under the order of the court pursuant to the provisions of this act, shall be as valid and effectual as if the same had been executed by such insane person, or other person above specified, when of sound memory and understanding.

When performance of contracts by lunatic, compelled.

§ 35. The court shall have authority to decree and compel the specific performance of any bargain, contract or agreement, which may have been made by any lunatic or other person specified in the twenty-sixth section of this act, while such lunatic or other person was capable to contract; and to direct the committee of such person to do and execute all necessary conveyances and acts for that purpose.

Limitation of lease of estate of insane person.

§ 36. The real estate of any insane person, or person of unsound mind, or person incapable of conducting his affairs in consequence of habitual drunkenness, shall not be leased for more than five years, or mortgaged or aliened or disposed of, otherwise than is herein directed.

When estate of lunatic restored.

§ 37. In case any insane person, or other such person, shall be restored to his right mind, and become capable of conducting his affairs, his real and personal estate shall be restored to him.

On death of insane person, estate how disposed of.

§ 38. In case of the death of any insane person, or person of unsound mind, or person incapable of conducting his affairs during such state of incapacity, the power of any committee or guardian appointed under this act, shall cease, and his real estate shall descend to his heirs, and his personal estate be distributed among his next of kin, in the same manner as if he had been of sound mind and memory.

Applications to chancery to be by bill.

§ 39. All applications to the chancery side of said court, shall be by bill, stating the nature and ground of the complainant's claim, and shall be filed in the office by [of] the clerk of such court.

Process not to issue, until bill filed, &c.

§ 40. No subpoena or other process for appearance shall issue out of said court until after the filing of the bill, except in cases of bills for injunctions to stay waste, or proceedings at law; and no in-

junction shall be issued in any case, until the complainant's bill shall be filed.

§ 41. All process may be directed to the sheriff, or other proper officer of any county in this territory, and shall by him be executed and returned to the court from whence it issued. And if there be more than one defendant in a suit, such suit may be instituted in the county where either of the defendants resides; and the clerk of the court may issue process against the other defendant, directed to the sheriff, or other proper officer of the county where they may be found; and on the return thereof, the like proceedings may be had as if all the defendants resided in the county where such suit is instituted; and the courts shall have power to enforce their decrees by process, directed in the manner aforesaid, in all cases in which they are authorized to hear and determine the matter in controversy.

Process to whom directed; when brought, &c.

§ 42. All process issuing from either of the courts aforesaid, shall be tested in the name of the judge of the court from whence it shall issue, or some one of the judges of the supreme court, and shall bear test on the first day of the term next preceding that to which the same may be made returnable; and the clerk issuing the same, shall mark thereon the day on which it issued; and the sheriff or other officer receiving the same, shall mark thereon, in like manner, the day on which the same shall come to his hands; and it shall be the duty of such sheriff, or other officer, to whom any subpœna, order, attachment, process of sequestration, writs of execution, or other process in chancery, shall be directed or delivered, to serve and execute the same, and to make return thereof at the time and place therein mentioned.

Process how tested; clerk to endorse; sheriff to execute, &c.

§ 43. Every subpœna or process for appearance shall be made returnable on a day certain, therein to be named, shall be served on the person to whom it is directed, at least ten days before the return thereof, by giving him a copy thereof, or by leaving a copy thereof at the dwelling-house or usual place of abode of the defendant, with some person of the age of ten years or upwards, to whom the nature of such process shall be explained.

Subpœna, how served.

§ 44. On the return of a subpœna, "served," by the sheriff or other officer, the court or judge shall direct the defendant to file his plea, answer or demurrer to the complainant's bill, if a resident, within such term, not exceeding sixty days, as the court or judge shall think proper; and if a non-resident, then within such term, not less than three months, as the court or judge may deem proper; and if the defendant shall not file his plea, answer or demurrer within the time limited by the court or judge at his chambers, then said court or judge may, at their discretion, render a decree thereon, or order the complainant to prove the allegations of his bill, or examine the complainant on oath, touching the allegations of such bill, and such decree shall then be made as the court or judge shall think fit.

Defendant directed to plead.

Proceedings when plea not filed, &c.

§ 45. In case of a bill filed against any defendant against whom a subpœna or process to appear shall issue, and such defendant shall not cause his appearance to be entered in such suit, as, according to the rules of such court, the same ought to be entered in case such process had been duly served, and it shall be made to appear by affidavit or otherwise, to the satisfaction of said court, that such defendant is out of the territory, or cannot upon inquiry be found therein,

Proceedings when defendant absent from territory.

or that he conceals himself within this territory, every such defendant shall be deemed, and taken to be, an absent defendant, [and thereupon the court may by order direct such absent defendant] to appear, plead, answer or demur to the complainant's bill, at a certain day therein to be named, not less than three nor more than six months from the date of such order; which order shall, within twenty days thereafter, be personally served on such defendant, by a delivery of a copy thereof to him, or be published in one or more of the newspapers printed in this territory, for six weeks successively, at least once in each week, and which said order shall also be published, or served in any other manner that the court may see proper in said order to direct; and in case such absent defendant shall not appear, plead, answer or demur within the time limited, or within some future time to be allowed by the court, if they shall think proper, and on proof of personal service, or of the publication of such order or orders, as aforesaid, and of the performance of the directions contained in said order or orders, to the satisfaction of the court, the court may order and direct that the complainant's bill be taken as confessed against such absent defendant so failing to plead, answer or demur, or the court may proceed as directed in the forty-fourth section of this act.

Plea set down for argument, &c.

§ 46. When a plea or demurrer shall be filed, it shall be the duty of the party pleading or demurring, within twenty days after filing the same, to set it down for argument at the next term, or in default thereof, the said plea or demurrer shall be overruled of course.

Complainant may reply.

§ 47. When the complainant conceives the plea of the defendant to be good, though not true, he may reply to and take issue thereon, and proceed as in case of an answer.

To file answer and demurrer.

§ 48. If the defendant file a demurrer and answer, the complainant shall not proceed on the answer, till the demurrer has been argued or disposed of.

When defendant to file answer.

§ 49. If the plea or demurrer be overruled, no other plea or demurrer shall be thereafter received; but in such case the defendant shall file his answer to complainant's bill, (in such time as the court or judge in his chambers may direct,) and if he fail to do so, the said bill shall be taken as confessed, and the said court shall thereupon proceed as directed in the forty-fourth section of this act.

Cost by whom paid.

§ 50. If the plea or demurrer of the defendant be allowed, the complainant shall pay costs, and if overruled the defendant shall pay costs.

Exceptions referred to master.

§ 51. When exceptions shall be filed to an answer, a rule may be entered of course with the clerk, either in term time or vacation, to refer the same to a master in chancery, who shall decide and report upon them within thirty days after they are filed; but an appeal from such report may be allowed to the court, who shall hear and determine the same at the next term.

Costs how paid.

§ 52. The complainant, if his exceptions are overruled, shall pay costs to the defendant; and the defendant, if his answer be adjudged insufficient, shall pay costs to the complainant.

Pleadings when cross bill filed.

§ 53. If a cross bill be filed by the defendant, he shall answer to the bill of the complainant before the complainant shall be required to put in his answer to such cross bill.

§ 54. The defendant may swear to his answer before any person Defendant to be sworn. authorized to administer oaths.

§ 55. All rules, common or special, by the consent of the parties Rules may be entered. or their solicitors, shall be entered of course with the clerk, whether in term time or vacation.

§ 56. All proper amendments shall be made with or without costs, Amendments. and on such equitable terms as the court may direct.

§ 57. Every cause in a court of chancery shall be deemed to be When cause deemed at issue. at issue on filing a replication; and it shall not be necessary to issue a subpoena or enter a rule to rejoin.

§ 58. The defendant in chancery, after he shall have filed his an- Interrogatories how answered. swer, may exhibit interrogatories to the complainant, which shall be answered by him upon oath; and if the complainant shall not answer such interrogatories within the time appointed by the court, he shall be in contempt, and his bill shall be dismissed with costs.

§ 59. If there be an issue of facts which shall render the introduc- When issue of facts tried by jury. tion of a jury necessary, the court may direct an issue for the trial of the same, and the verdict shall be entered of record, and may be used on the hearing of the cause.

§ 60. The complainant shall file exceptions, or a replication, or Complainant when to plead. set down the cause for hearing upon bill and answer, within the time granted for filing the answer, or on failure thereof, his bill shall be dismissed with costs, unless good cause be shown for delay.

§ 61. If the complainant shall not attend at the time appointed for When bill to be dismissed. the hearing of the cause, his bill shall be dismissed with costs.

§ 62. If the defendant shall not attend at the time appointed for In case defendant does not attend. the hearing of the cause, the bill, answer, replication, documents and proofs, shall be read, the witnesses examined, and the court shall thereupon make such decree as they shall think equitable and just, or dismiss the complainant's bill.

§ 63. The complainant may insert in his bill as many defendants Number of defendants complainant may insert in bill. as he may think proper, though they claim under different titles; but if any of the defendants disclaim, the complainant shall pay costs, except the court shall for special reasons decree otherwise.

§ 64. Any person having the possession and legal title to land, Suits may be instituted against persons claiming title. may institute a suit against any other person setting up a claim thereto; and if the claimant shall be able to substantiate his title to such land, the defendant shall be decreed to release to the complainant all claim thereto, and to pay costs, unless the defendant shall, by his answer, disclaim all title to such land, and give a release to the complainant, in which case the defendant shall be entitled to costs, except the court, on a hearing of the cause, shall otherwise order or decree.

§ 65. In cases where a decree shall be made upon any bill in Proceedings when decree made against absent defendant. equity against an absent defendant, the court, before issuing process to compel the performance of such decree against such absent defendant, may require the complainant to give bond, with such security and in such sum as it may direct, to abide such decree or order touching the restitution of the property of such absent defendant, or the repayment of any sum of money which the complainant may receive by virtue of such decree, but which shall afterwards be made to appear, as hereafter provided, not to have been due to him; and in case no security shall be given, no process or execution shall issue to

compel the performance of the decree so made against such absent defendant ; but the property of such absent defendant may, by order of the court, be sequestered under the direction of the court, to abide such order as it may think just and proper respecting the same : *And further*, In case any such absent defendant against whom a decree shall be made as aforesaid, his heirs, devisees, executors, administrators or assigns, as the case may require, shall, within six months after notice be given to him of such decree, or within three years after such decree shall have been made, if no notice as aforesaid shall have been given, petition the court touching the matter of such decree, and pay, or secure or cause to be paid, such costs as the court may think reasonable to order and direct, then and in such case the person aforesaid so petitioning, may be permitted to appear and answer the complainant's bill, and thereupon such proceedings shall be had as if such absent defendant had appeared in due season and no decree had been made ; or such absent defendant may, within the times aforesaid, file his bill of complaint in the said court for an account and settlement of the amount which was really due and owing to the complainant at the time of the decree, and to compel the said complainant to refund and repay what he may have wrongfully recovered and received, together with the interest from the time of the receipt thereof, with costs of suit, the former decree against such absent defendant notwithstanding ; but in case no petition shall be presented or bill filed as before provided for, within six months from the time notice as aforesaid shall be given, due proof thereof being made, or within three years from the date of the decree, the decree shall be adjudged to be confirmed, which confirmation shall have relation to the time of making such decree : *And further*, That the decree be executed and performed as in cases where the defendant had duly appeared.

Effect of final decree.

§ 66. A final decree of a court of chancery shall have the same operation, force and effect, from the time of signing the same, as a judgment at law.

Decree need not be enrolled, &c.

§ 67. It shall not be necessary to enrol any decree or dismissal in a court of chancery, but immediately after any decree shall have been pronounced, the bill, answer, and all other proceedings, in the cause in which such decree shall be had, shall be attached together by the clerk of the court, and filed in his office, together with a fair engrossed copy of such decree or admission, [dismission,] and also the report and decretal orders therein, but without any recital of the bill, answer or pleadings, and after the same is signed by the court, shall annex it to the bill, answer and pleadings, which shall be of like effect as if the same had been enrolled.

Title may be passed by decree.

§ 68. A court of chancery shall have power to pass the title to real estate, by a decree, without any other act to be done on the part of the defendant, when in their judgment, it shall be the proper mode to carry their decrees into effect ; and such decree being recorded in the records of the register of deeds of the county where such real estate is situated, shall while in force, be as effectual to transfer the same as the deed of the defendant.

Injunction to stay trial, when not to issue.

§ 69. No injunction shall be issued to stay the trial of any personal action at issue in a court of law, until the party applying therefor, shall execute a bond with one or more sufficient sureties to the plain-

tiff in such action at law, in such sum as the judge or master allowing the injunction shall direct, conditioned for the payment to the said plaintiff and his legal representatives, of all moneys which may be recovered by such plaintiff or his representatives, or the collection of which may be stayed by such injunction, in such action at law for debt or damages and for costs therein; and also for the payment of such costs as may be awarded to them in the court of chancery in the suit in which the injunction shall issue.

§ 70. No injunction shall be issued to stay proceedings at law in any personal action after verdict and before judgment thereupon, unless a sum of money, equal to the amount for which the verdict was given and the costs of suit, shall be first deposited with the court of chancery by the party applying for such injunction, or a bond for the payment thereof, shall be given as herein after directed. What necessary to obtain injunction, &c. to stay proceedings before judgment.

§ 71. No injunction shall issue to stay proceedings at law in any personal action after judgment, unless, Ib. after judgment.

1st. A sum of money equal to the full amount of such judgment, including costs, shall be first deposited by the party applying for such injunction, or a bond in lieu thereof, be given as herein after directed; and,

2nd. Unless such party, in addition to such deposit, shall also execute a bond, with one or more sufficient sureties, to the plaintiff in the said judgment, in such sum as the judge or officer allowing the injunction shall direct, conditioned for the payment to the said plaintiff and his legal representatives of all such damages and costs as may be awarded to them by the court at the final hearing of the cause.

§ 72. If after a verdict or judgment at law any moneys shall be deposited in the court of chancery, pursuant to either of the two last sections, the same may be paid on the order of the court, to the plaintiff in such action at law, upon his executing a bond to the United States, in a penalty double the amount so deposited, with such sureties as the court shall approve, conditioned that such plaintiff will pay to the clerk of the court in which such order shall be made, the moneys which he shall so receive, and the interest thereon, or any part thereof, according to any order or decree of the court of chancery that may be made in relation to the same. Money deposited in chancery, how disposed of.

§ 73. Whenever the moneys so deposited shall be paid to the plaintiff in the action at law, if the final decision of the cause in chancery be against the party obtaining the injunction, the judge may order any bond that may have been given by such plaintiff to be cancelled, and shall continue the injunction to stay the collection of the judgment at law, or shall compel the plaintiff therein to cause such judgment to be satisfied and discharged of record. Ib.

§ 74. No injunction shall issue to stay proceedings at law in any action for the recovery of lands, or of the possession thereof, after verdict, unless the the party applying therefor shall execute a bond with one or more sureties to the plaintiff in such action at law, in such sum as the judge or officer allowing the injunction shall direct, conditioned for the payment to the plaintiff in such action, and his legal representatives, of all such damages and costs as may be awarded to them in case of a decision against the party obtaining such injunction. Injunction to stay proceedings after verdict.

Damages,
how ascer-
tained.

§ 75. The damages to be paid upon the dissolution of such injunction shall be ascertained by reference to a master, and shall include not only the reasonable rents and profits of the land recovered by such verdict, but all waste committed thereon after the granting of the injunction.

Judge may
direct exe-
cution of
bond in cer-
tain cases.

§ 76. The judge shall have power to dispense with any deposit of moneys required by either of the preceding sections, and in lieu thereof to direct the execution of a bond with sureties, conditioned to pay the amount so required to be deposited, whenever ordered by the court; or if a bond is already required in addition to such deposit, then to direct the enlargement of the penalty and condition of such bond as may be requisite. But whenever such deposit shall be dispensed with, the bond so substituted or enlarged shall be executed by at least two sufficient sureties.

1b.

§ 77. Whenever an injunction shall be applied for to stay proceedings at law in any action after judgment or verdict, on the ground that such judgment or verdict was obtained by actual fraud, the judge shall have power to dispense with the deposit of any moneys or the execution of any bond.

Sufficiency
of sureties,
how ascer-
tained.

§ 78. The sufficiency of the sureties in any bond executed under the provisions of this act shall be ascertained, either,

1st. By the certificate of any master in chancery, stating that he has inquired into the circumstances of such sureties, and is satisfied with their sufficiency; or,

2. By the affidavit of each surety, stating that he is a householder resident within this territory, and that he is worth a sum equal to the amount in which the bond shall have been required, over and above all debts and demands against him.

Every such certificate and affidavit shall be annexed to or endorsed on the bond.

Bond, when
to be filed
before in-
junction is-
sued.

§ 79. Whenever a bond shall be required to be executed pursuant to the provisions of this act, prior to the issuing of an injunction, the same, with the certificate or affidavit above required, shall be filed with the clerk of the court before the sealing and delivery of the injunction.

To whom
bond to be
delivered.

§ 80. The judge shall direct the delivery of any bond executed under the provisions of this act to the person entitled to the benefit thereof for prosecution, whenever the condition of such bond shall be broken or the circumstances of the case shall require such delivery.

When court
may decree
sale of mort-
gaged premi-
ses.

§ 81. Whenever a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage, and the costs of suit.

When may
decree pay-
ment of bal-
ance due.

§ 82. When a bill shall be filed for the satisfaction of a mortgage, the court shall not only have power to decree and compel the delivery of the possession of the mortgaged premises to the purchaser thereof, but on the coming in of the report of sale, the court shall also have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt that may remain unsatisfied after a sale of the premises in the cases in which such balance is recoverable at law, and for that purpose may issue the necessary executions as in other cases against other property of the mortgagor, or against his person.

§ 83. After such bill shall be filed, while the same is pending, and after a decree rendered thereon, no proceedings whatever shall be had at law, for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court of chancery.

No proceedings after bill is filed.

§ 84. If the mortgage debt be secured by the obligation or other evidence of debt hereafter executed, of any other person besides the mortgagor, the complainant may make such person a party to the bill, and the court may decree payment of the balance of such debt remaining unsatisfied, after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

When other person than mortgagor held to pay debt.

§ 85. Upon filing a bill for the foreclosure or satisfaction of a mortgage, the complainant shall state therein, whether any proceedings have been had at law, for the recovery of the debt secured thereby, or any part thereof; and whether such debt or any part thereof, has been collected.

Bill to foreclose, &c. what to state.

§ 86. If it appear that any judgment has been obtained in a suit at law, for the moneys demanded by such bill, or any part thereof, no proceedings shall be had in such case, unless to an execution against the property of the defendant in such judgment, the sheriff shall have returned that the said execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution, except the mortgaged premises.

Proceedings when judgment obtained for part of moneys, &c.

§ 87. All sales of mortgaged premises, under the decree of the court, shall be made by a master in chancery, in the county where the premises, or some part of them, are situated, unless otherwise directed in the decree of sale.

Sales, by whom made, and effect.

§ 88. Deeds shall thereupon be executed by such master, which shall vest in the purchaser the same estate (and no other or greater) that would have vested in the mortgagee, if the equity of redemption had been foreclosed; and such deeds shall be as valid as if the same were executed by the mortgagor and mortgagee, and shall be an entire bar against each of them, and against all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all claiming under such heirs.

Deeds, by whom made, and effect.

§ 89. The proceeds of every sale made under the decree of a court of chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded; and if there shall be any surplus it shall be brought into court for the use of the defendant, or of the person who may be entitled thereto, subject to the order of the court.

Proceeds of sale, how applied.

§ 90. If such surplus, or any part thereof, shall remain in the said court, for the term of three months without being applied for, the judge shall direct the same to be put out at interest, under the direction of the court, for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of such court.

When surplus put out at interest.

§ 91. Whenever a bill shall be filed for the satisfaction or foreclosure of any mortgage, upon which there shall be due any interest, or any portion or instalment of the principal, and there shall be other portions or instalments to become due subsequently, the bill shall be dismissed, upon the defendant's bringing into court, at any time before the decree of sale, the principal and interest due, with costs.

When part only of debt is due.

When defendant brings money due into court.

§ 92. If after a decree for sale entered against a defendant in such case, he (*she*) shall bring into court the principal and interest due, with the costs, the proceedings in the suit shall be stayed; but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court, upon a subsequent default in the payment of any portion or instalment of the principal, or of any interest thereafter to grow due.

When court to direct part of premises to be sold.

§ 93. If the defendant shall not bring into court the amount due, with costs, or if for any other cause, a decree shall pass for the complainant, the court shall direct a reference to a master, to ascertain and report the situation of the mortgaged premises; and if it shall appear that the same can be sold in parcels, without injury to the interest of the parties, the decree shall direct so much of the said premises to be sold, as will be sufficient to pay the amount then due on such mortgage, with costs; and such decree shall remain as security for any subsequent default.

1b.

§ 94. If in the case mentioned in the preceding section, there shall be any default subsequent to such decree, in the payment of any portion or instalment of the principle or of any interest due upon such mortgage, the court may, upon the petition of the complainant, by a further order founded upon such first decree, direct a sale of so much of the mortgaged premises to be made under the said decree, as will be sufficient to satisfy the amount so due, with the costs of such petition and the subsequent proceedings thereon; and the same proceedings shall be had, as often as a default shall happen.

May order whole of premises sold.

§ 95. If in any of the foregoing cases, it shall appear to the court, that the mortgaged premises are so situated, that the sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole accordingly.

Proceeds of sale, how disposed of.

§ 96. In such case the proceeds of such sale shall be applied as well to the interest, portion or instalment of the principal due, as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sale; and if such residue do not bear interest, then the court may direct the same to be paid, with a deduction of the rate of legal interest, for the time during which such residue shall not be due and payable; or may direct the balance of the proceeds of such sale, after paying the sum due, with costs, to be put out at interest for the benefit of the complainant, to be paid to him as the instalments or portions of the principal or the interest may become due, and the surplus for the benefit of the defendant, his representatives or assigns, to be paid to them on the order of the court.

Rules for proceeding.

§ 97. The courts aforesaid may, from time to time, make rules for proceeding in taking a bill as confessed, in every case, not otherwise provided for by law; and also for the proceedings necessary to entitle either party to a decree or order of such court against the opposite party, by default: *Provided*, That nothing herein contained shall affect the proceedings for divorce, in case of adultery, but such proceedings shall be prosecuted according to the statutes regulating the same, and the course and usages of the court thereupon.

Limitation.

Rules or practice may be revoked.

§ 98. It shall be lawful for the court, from time to time, to make, alter or amend, or revoke any rule or practice, so as to obviate doubts,

advance justice and expedite suits in the said court, so that the same be not contrary to the provisions of this act.

§ 99. It shall be in the power of any judge, in vacation, to make orders of reference to a master, in any cause depending in chancery, which is ready for a reference, before the final hearing of the same: *When order of reference may be made.* *Provided,* That the party applying for such reference shall give ten days notice to the opposite party, or his solicitor, of the time and place, and the judge before whom he means to make a motion for such reference.

§ 100. Either of the courts aforesaid, sitting as a court of chancery, shall have power to enforce their decrees and orders by attachment, sequestration, or by such final process against the goods, chattels, lands and tenements, or against the person of any defendant, as may be had on a judgment at law; and such process shall be obeyed, executed and returned by the sheriff, or other officer to whom the same shall be directed, in like manner, and under the same penalties as is provided in cases of process issuing from a court at law. *Decrees, how enforced.*

§ 101. When any person, being complainant or defendant, shall think himself aggrieved by the decree or final order of a district court, sitting as a court of chancery, such person may enter an appeal within thirty days to the supreme court from such decree or final order, on giving bond, with good security, in such sum as the judge of the district court shall order, conditioned to pay, satisfy and perform the decree or final order of the supreme court, and all costs, in case the decree or final order of the district court shall be affirmed; and if the decree or final order of the district court shall there be confirmed, the supreme court may award such damages against the appellant as they may think proper, not exceeding twenty-five per cent on the amount of the money, or other subject matter of such decree. *Appeal to supreme court allowed.*

§ 102. The courts aforesaid, or any judge thereof in vacation, shall have power to grant writs of injunction to stay waste, or to stay proceedings at law; but no writ of injunction shall issue but upon bill filed, and an affidavit of the truth of the grounds of the application, either by the party applying for the injunction or some indifferent witness. *Writs of injunction, when granted.*

§ 103. All writs of injunction granted by a judge in vacation, shall be made returnable to the next term of the court to which the same is properly returnable, and the court shall proceed therein according to the course of proceeding in courts of equity. *When returnable.*

§ 104. The courts aforesaid, or any judge thereof in vacation, may grant writs of ne exeat to prevent any person from going out of the territory until he shall give security. *Writ of ne exeat, when granted.*

§ 105. No writ of ne exeat shall be granted but upon bill or petition filed, and affidavit of the complainant or some indifferent witness, of the truth thereof; and the court or judge granting such writ shall direct to be endorsed thereon the penalty of the bond and security to be given by the defendant. *ib.*

§ 106. If the defendant shall, by answer or otherwise, satisfy the court or judge granting such writ of ne exeat, that there is no reason for his restraint, or shall give security for the performance of whatever decree may be made in the premises, the writ may be discharged. *When discharged.*

Stated terms
of court of
chancery.

§ 107. The stated terms of the courts of chancery shall be the same as those of the courts sitting as courts of common law jurisdiction; and each of said courts shall have power to appoint as many special terms as they may deem proper.

Defendant to
answer bill
charging him
with fraud.

§ 108. A defendant shall be compelled to answer any bill in chancery, where by law a bill may now be filed, charging the defendant with being a party to any conveyance or assignment of any estate or interest in lands, goods or things in action; or any rents or profits arising therefrom, or to any charge on any such estate, interest, rents or profits made or created, with interest [intent] to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons, or where the defendant shall be charged with any fraud whatever, affecting the right of property of others.

Such an-
swer not
evidence.

§ 109. No such answer shall be read in evidence against any party thereto on any complaint, or on the trial of any indictment for the fraud charged in such bill.

AN ACT establishing courts of probate, defining their jurisdiction and powers, and directing the settlement of estates therein.

1. Of the probate court and proceedings therein.
2. Settlement of estates not represented insolvent.
3. Settlement of insolvent estates.
4. Partition of estates among heirs and devisees.
5. Miscellaneous provisions relative to the settlement of estates.
6. Assignment of dower.

I. Of the Probate Court, and proceedings therein.

Judge of
probate in
each county.

§ 1. A court of probate shall be held in each of the several counties of this territory, and there shall be some able and learned person appointed in each of said counties as judge of said court, who shall take an oath to support the constitution of the United States of America, and faithfully and impartially to discharge the duties required of him by law.

Jurisdiction
and powers
of probate
court.

§ 2. Said court shall have power to take the probate of wills, grant letters of administration on the estates of persons deceased, having been inhabitants of, or residents in the same county, at the time of their decease; appoint guardians to minors, idiots and distracted persons; examine and allow the accounts of executors, administrators and guardians, and shall have cognizance of all such other matters and things as the laws of this territory do or may direct; and shall have full power and authority to make out all such process and processes as may be needful for the proper discharge of the trusts reposed in said court; said court shall have authority to punish for contempt of authority in any case or hearing in like manner as such contempt of authority in any court of record may or can by law be punished.

Sheriff to
serve pro-
cess.

§ 3. All sheriffs and constables are required to serve and execute all legal warrants, summons or other process to them directed, within their respective counties, by any judge of probate.

Judge to
keep regis-
try of wills,
&c.

§ 4. The said judge shall keep a registry of wills, administrations, accounts, decrees, orders, determinations and other writings, which shall be made, granted or decreed upon by him; and shall have custody and keeping of all files, papers and books to the probate office

belonging; and in case of the inability of said judge, from any cause, to perform the duties mentioned in this section, it shall and may be lawful for him to appoint some competent person to perform said duty, which person so appointed shall be first sworn for the faithful discharge of his duties, and may receive the same compensation as the judge would have received for similar services.

§ 5. The district courts within their respective districts shall have appellate jurisdiction of all matters determined by the judges of probate in their respective counties; and all appeals from any order, decree, sentence, denial or decision of any judge of probate, shall be made to said district court accordingly; and the said district court shall have cognizance in the first instance of all matters wherein the judge of probate of any county is a party or interested.

District court to have appellate jurisdiction.

§ 6. When any person shall be desirous of appealing from any order, decree, sentence, denial or decision of any judge of probate, the appeal shall be claimed within one month from the time of making such order, decree, sentence, denial or decision, and the appellant shall cause a bond to be given and filed in the probate office within ten days after such appeal shall be claimed and granted for the prosecution thereof to effect, at the next term of the district court, and for paying all intervening costs and damages, and such costs as the district court shall tax against him; and such appeal shall be taken notice of and proceeded upon at the term of the district court which shall be holden next after the expiration of twenty days after such appeal shall be made; and the appellant shall file the reasons of appealing in the probate court appealed from, within ten days after the security is given, and shall serve the adverse party or parties with an attested copy of such reasons, fourteen days at least before the sitting of the district court at which the trial is to be had: *Provided*, That any person beyond the sea or out of the United States, who shall have no sufficient attorney within this territory at the time of such order, decree, sentence, denial or decision, shall have one month after his or her return, or appointment of such attorney, to claim and prosecute their appeal as aforesaid.

Method of appealing from decision of probate court.

§ 7. When it shall appear from the reasons of appeal that the sanity of a testator or the attestation of witnesses in his presence, as the law directs, is the question in controversy on any will or codicil, the district court may, for the determination thereof, direct a real or feigned issue, to be tried before a jury in said court at the expense of the appellant, in case the issue be found against him.

When jury to try issue.

§ 8. The district court may assess reasonable costs in all cases that may be brought before said court, by way of appeal from the respective judges of probate, and may issue execution therefor.

Costs may be assessed.

§ 9. Whenever there shall be an appeal from any probate court to the district court, as is herein before provided, and the appellant shall file in the probate court, the reasons of his appeal, and give bonds to prosecute the same to effect, according to law, and shall notify the adverse party thereof, in that case all further proceedings in consequence of such order or decree, shall be stayed until the final determination shall be had thereon.

Appellant to file reasons of appeal.

§ 10. Whenever any person has been aggrieved by any order, decree, sentence, denial, or decision of any probate court, and such person by accident, mistake, or otherwise, shall not have appealed

When district court may allow appeal.

to the district court, agreeably to the provisions and requisitions of law, the district court upon petition, and after notice to the person or persons interested, to support such order, decree, sentence, denial or decision, and it appearing that the petitioner for relief has not lost his appeal by his own neglect, and that justice requires a revision of said order, decree, sentence, denial or decision, may grant an appeal therefor to be entered, heard or determined in said district court: *Provided*, Such petition shall be preferred within one year next after such order, decree, sentence, denial or decision shall have been made by such judge.

Judge may
commit sus-
pected per-
son to jail.

§ 11. The judge of probate, within his county, is authorized and empowered to call before him and examine upon oath, any person suspected and complained of, by any executor or administrator, heirs, creditors, legatees or other person having lawful right or claims to the estate of any person deceased, of having concealed, embezzled or conveyed away any of the goods and chattels, or money left by the testator or intestate, for the discovery of the same; and if the person complained of as aforesaid, shall refuse to be examined, or to answer interrogatories upon oath, respecting the estate, which he or she may be suspected of concealing, embezzling or carrying away, it shall and may be lawful for, and the said judge is hereby empowered to commit such person so refusing to answer or be examined on interrogatories upon oath, as aforesaid, unto the common jail of the county, there to remain until he or she shall consent to be examined, and answer interrogatories upon oath as aforesaid, or be released by the consent of the person suspecting and complaining against him or her, or by order of any one of the judges of the supreme court.

Judge may
commit per-
son refusing
to account,
&c.

§ 12. The judge of probate is empowered to cause any person to come before him that may be intrusted by any executor or administrator with any part of the estate of the testator or intestate, or any person assisting such executor or administrator, in the execution of his trust, who shall refuse, upon a citation, issued by the judge of probate for that purpose, to appear before him and render a full account upon oath, of any money, goods or chattels, and of any bonds, accounts or other papers, belonging to the estate of the testator or intestate, which he shall have taken into his hands or custody, and of his proceedings for and in behalf of such executor or administrator, in his capacity as such; and if such person shall refuse to render account as aforesaid, such judge may proceed against him in the way and manner before directed for persons suspected of concealment, who refuse to answer interrogatories upon oath.

May appoint
guardian for
minors.

§ 13. The judge of probate, when, and so often as there shall be occasion, is hereby empowered to allow of guardians that shall be chosen by minors of fourteen years of age, and to appoint guardians to such as are within or under that age, taking sufficient security of all such guardians for the faithful discharge of their trust, and to account either with the judge or minor, when such minor shall arrive at the age of twenty-one years, or at such other times as the judge, upon complaint being made to him, shall direct; and when any minor above the age of fourteen years, shall be cited by the judge to choose a guardian, and such minor shall refuse or neglect to appear, or when appearing, shall refuse to choose a guardian, or when any guardian chosen by any such minor, shall be unable to

give sufficient security, or shall refuse the trust, or when any minor above the age of fourteen years shall be without this territory, in every such case, the judge of probate shall have the same power to appoint a guardian, as though such minor were under the age of fourteen years; *Provided*, When a minor above the age of fourteen years, is living more than ten miles distant from the place of holding the probate court, such minor may have his choice certified to such judges, by any justice of the same county, which choice so certified, shall be deemed as good and valid as if done in the presence of the judge.

§ 14. Said judge shall have power, from time to time, upon request made by the friends or relations of any idiot, non compos, lunatic or distracted person, or by any other person of the county where such idiot, non compos, lunatic or distracted person lives, or is an inhabitant, to direct any three discreet persons of said county, at his discretion, to make inquisition thereinto: and if the person said to be an idiot, lunatic or distracted person shall be adjudged by the persons appointed to make inquisition, or a majority of them, to be incapable of taking care of him or herself, and they shall certify the same under their hands to the judge, the said judge shall assign some suitable person or persons to be guardian or guardians to such idiot, lunatic, non compos or distracted person, directing and empowering such guardian or guardians to take care of such person, and the real and personal estate of such person, and to make a true and perfect inventory of the estate, to be returned to and filed in the probate office in said county.

Judge may appoint guardians for idiots, &c.

§ 15. The judge of probate is fully authorized and empowered, upon complaint of any heir, creditor or other person having lawful right or claim in expectancy, to the estate of any idiot, lunatic, non compos or distracted person, as well as the guardian or guardians, to proceed with any person or persons suspected of concealing, embezzling or conveying away any money, goods or chattels of such idiot, lunatic, non compos or distracted person, in the same way and manner as is by law prescribed for persons suspected of concealing, embezzling or conveying away the money, goods or effects of deceased persons.

Proceedings with persons suspected of concealing, &c.

§ 16. The judge of probate may also appoint guardians for the children of idiots, lunatics, non compos or distracted persons, in the same way and manner as though their parents were naturally dead; and may in like manner appoint guardians to children whose parent or parents is or are unfit from excessive drinking to perform the duties of a parent to such minor children.

Guardians to children of idiots.

§ 17. When any person by excessive drinking, gaming, idleness or debauchery of any kind, shall so spend, waste or lessen his or her estate, as thereby to expose himself or herself, or his or her family, or any of them, to want or suffering circumstances, or shall by thus spending, wasting or lessening his or her estate, endanger or expose the county or township to which he or she belongs, in the judgment of the overseers of the poor of the township or county, to a charge or expense for the maintenance and support of him or her, or his or her family, or any of them, the overseers of the poor of the township or county, or a major part of them, shall in such case lodge a complaint with the judge of probate; and if it shall appear to said judge that the

Guardians to drunkards, gamblers, &c.

person complained of comes within the description of this act, and has had due notice of the complaint exhibited against him or her, as the case may be, then and in that case the said judge shall appoint the overseers of the poor, or other suitable and discreet person or persons, guardian or guardians to such person, and no sale or bargain of any real or personal estate, made by such person or persons after the appointment of guardianship as aforesaid, shall be held valid in law; and such appointment made as aforesaid, shall be recorded in the office of the register of deeds of the county where such real estate may be situate, before the title to the same shall in any way be affected; and the guardian or guardians that may be thus appointed, shall, in discharging the duties of their appointment, pursue the same method, and be under similar obligations for a faithful discharge of their trust as guardians appointed for lunatics, idiots or persons non compos mentis.

Time for holding courts to be fixed.

§ 18. The judges of probate in the respective counties, shall have certain fixed days and places for holding their courts, and for making and publishing their orders and decrees, and such days shall be made known by public notice thereof in the several counties; and the said probate court may be adjourned from time to time, and any process or proceeding therein may be continued to such time as the said court may order or direct.

Time of holding court may be altered, &c.

§ 19. Whenever any time shall be appointed for holding any probate court in any county, and such time shall be found to interfere with any other court, or whenever any judge shall be prevented by sickness or inevitable casualty, or other cause, from holding the same at the time appointed, or whenever it shall appear to him to be for the general good or interest of individuals, he is hereby authorized to appoint such other time for holding said court as he shall deem expedient, by giving public notice thereof, or notifying all concerned; and in such case all matters therein undetermined shall stand continued as a matter of course.

Penalty for witness not appearing.

§ 20. When any person shall be cited to appear as a witness before the probate court, or before the judge of probate in any cause or hearing, and such person shall refuse to appear or give evidence, he or she shall be liable to the like penalty or damage as such person would be liable to for refusing to appear or give evidence in the supreme or district court.

Will may be proved by deposition, &c.

§ 21. When an original will is offered for probate before any court of probate in this territory, and the witnesses live out of this territory, or more than thirty miles distant, or by reason of age or indisposition of body, are unable to appear and give evidence before the court, in every such case the deposition of such witness in writing, taken before any person or persons duly authorized by *dedimus potestatem* from such probate court, shall have the same force and effect as though the witness was present and testified *viva voce* before the court: *Provided*, Before the probate of any will shall be allowed from the evidence of affidavits, such proceedings shall be had in all respects, as are provided respecting wills previously proved and allowed in a court of probate without the territory.

When judge not to decide.

§ 22. No judge of probate shall be allowed or admitted to have a voice in judging or determining, nor shall he be admitted to plead or

act as attorney, in any civil action whatever, which may depend on, or have relation to any decree made or passed by him as such judge.

II. *Settlement of estates not represented insolvent.*

§ 23. After the decease of any person intestate, administration of such intestate's goods and estate shall be granted to the widow or next of kin to the intestate, (upwards of twenty-one years of age,) or both, as the judge of probate shall think fit, within thirty days, or sooner, and an inventory taken of all the estate of the deceased within three months, or sooner, by three suitable persons appointed by and sworn before the judge of probate, for the faithful discharge of that trust; and after the expiration of thirty days from the death of any intestate, in case the widow or next of kin shall refuse or neglect to take out letters of administration, being cited before the judge of probate for that purpose, in case they are resident within the county, he may commit administration of any such estate to some one or more of the principal creditors, if accepted by them, or others, if he shall think fit, after their refusal; and every administrator shall, before he enter upon the execution of his trust, give bond to the judge of probate, with good and sufficient securities, upon condition, among other things, to make and return a true inventory of the estate administered on into the probate office within three months, and to render an account of administration within one year from the time of taking administration, which bond shall be in the following or other equivalent form:

Who appointed administrator.

To give bond.

Form of bond.

Know all men by these presents, that we within the territory of are holden, and stand firmly bound and obliged to esquire, judge of probate of wills, and granting administration in the county of in the full sum of dollars, in lawful money of the United States, to be paid unto the said his successor in office or assigns, to the true payment whereof we do bind ourselves and each of us, our and each our heirs, executors and administrators, jointly and severally, for the whole and in the whole, firmly by these presents. Sealed with our seals, dated the day of in the year of our Lord one thousand eight hundred and The condition of this obligation is such, that if the above bounden do make or cause to be made, a true and perfect inventory, of all and singular, the goods, chattels, rights and credits of the said deceased, which shall have come to the hands, possession or knowledge of the said or into the hands or possession of any person or persons, for and the same so made, do exhibit, or cause to be exhibited into the registry of the court of probate for the said county of at or before the day of next ensuing; and the same goods, chattels, rights and credits of the said deceased, at the time of death, which shall at any time after come to the hands and possession of said or unto the hands or possession of any other person or persons for do well and truly administer according to law: And further, Do make or cause to be made, a just and true account of said administration, upon oath, at or before the day of which will be in the year of our Lord one thousand eight hundred and; and all the rest and residue of said goods, chattels, rights and credits, which shall be found remaining upon the ac-

count of the said administration, (the same being first examined and allowed by the judge or judges, for the time being, of the probate of wills, and granting administrations within the county of aforesaid,) and shall deliver and pay unto such person or persons respectively, as the judge or judges, by his or their decree or sentence, pursuant to law, shall appoint or limit: And if it shall hereafter appear that any last will and testament was made by the said deceased, and [the] executor or executors therein named, do exhibit the same into the court of probate for the county of making request to have it allowed and approved accordingly; if the said within bounden, being thereunto required, do render and deliver the said letter of administration, (approbation of such testament being had and made,) into the said court; then the above written obligation to be void and of none effect, or else to abide and remain in full force and virtue. Sealed and delivered in presence of us.

Sureties
when to be
residents.

§ 24. When any person not being an inhabitant of this territory shall take letters of administration on any intestate estates or letters of guardianship in behalf of minors, he or they shall, previous to such letters being granted, give bond, with sufficient securities, being inhabitants of this territory, to the judge of probate granting such letters, for the faithful performance of the trust reposed in said administrators or guardians.

Personal es-
tate how dis-
tributed.

§ 25. When any person shall be possessed of any chattels or personal estate not by him bequeathed, the same shall be distributed among his heirs in the same way as real estates descend by law. Such chattels or personal estates shall be chargeable with all the just debts and personal charges of the deceased, and after payment thereof of the surplusage shall, by the judge of probate, be decreed, one-third part to the widow of the deceased forever, unless the intestate died without issue, in which case she shall have one-half thereof forever.

Widow's
share.

Personal es-
tate how de-
vised.

§ 26. Personal estate may be devised in the same manner as real estate is or may be devised, and any will in writing hereafter offered for probate, which purports a disposition of both real and personal estate, that shall not be properly attested and subscribed, shall not be approved and allowed as a testament of personal estate only.

Wills of per-
sonal estate
how altered.

§ 27. No will in writing concerning any goods, chattels or personal estates shall be repealed, nor shall any clause or bequest therein be altered or changed by any words, or will by words of mouth only, except the same be committed to writing and read to the testator and allowed by him, in the presence of three credible witnesses at least. *Provided always*, That any soldier in actual military service, or any mariner at sea, may dispose of his moveables, wages and other personal estates, as he might have done before the passage of this act.

Appraisers
how appoint-
ed.

§ 28. In case the estate of any person dying intestate shall lie more than ten miles from the usual place of holding the probate court, then it shall be lawful for the judge to appoint appraisers of such estate; and in case any part of the estate is situate out of the limits of the county, then it shall be lawful for any justice of the peace of the county in which such estate lies, to appoint appraisers of such part of the estate; the appraisers shall be sworn before the judge or a justice of the peace, and such justice shall certify the same when taken bo-

fore him, together with the appointment, which shall be as valid and effectual as if the said appraisers had been appointed and sworn by the judge of probate.

§ 29. Every administrator shall account for the personal estate as the same shall be appraised, unless the judge shall think fit otherwise to dispose of the same, in which case he shall order such estate, or any part thereof, to be sold at public auction or at private sale, in such manner as he shall determine will best serve the interest of all persons concerned, in which case the administrator shall account for such estate as the same was sold.

Administrator to account.

III. *Settlement of insolvent estates.*

§ 30. The executor or administrator appointed to any insolvent estate, before payment be made to any, except debts privileged as hereinafter provided, shall represent the condition and circumstances thereof to the judge of probate, and the said judge shall thereupon appoint two or more commissioners with full power to receive and examine the claims, of all creditors; and such commissioners shall cause the times and places of their meeting to attend the creditors for receiving and examining their claims to be made known by advertisement, in such manner as the judge may direct.

Commissioners appointed to examine claims, &c.

§ 31. Six months, and such further time, not exceeding eighteen months, as the circumstances of any estate may require, shall be allowed by the judge to the creditors for bringing in and proving their claims; at the end of which time so allowed, such commissioners shall make their report, and present upon oath a list of all claims laid before them, and the amount allowed on each.

Time allowed to prove claims.

§ 32. The judge shall order payment of the expenses of settling the estates, debts due for rates and taxes, debts due the United States, debts due the territory, debts incurred for the last sickness of the deceased and necessary funeral charges, after deducting which, the residue of the estate, real and personal, (the real estate being first sold according to law,) to be paid and distributed to and among the creditors whose claims shall have been allowed by the commissioners, in proportion to the sums so allowed, saving unto the widow her right of dower in the houses and lands of the deceased; which dower, (unless the reversion shall be sold by the executor or administrator and distributed with the other estates which the judge may order if he see fit,) at the expiration of her time shall also be distributed among the creditors as aforesaid in like proportion.

Debts in what order to be paid, &c.

§ 34. Notwithstanding the report of the commissioners, any creditor whose claim is wholly or in part rejected, may have the same determined at the common law, in which case he shall give notice thereof in writing at the probate office, within twenty days after such report shall be made, and bring and prosecute his action as soon as may be.

When claim determined by law.

§ 35. In case the executor or administrator shall be dissatisfied with any creditor's claim allowed by the commissioners, and shall give notice thereof at the probate office, and also to the creditor, within twenty days as aforesaid, such claim shall be struck out of the commissioners' report, unless the creditor shall commence and prosecute his claim as aforesaid at the common law: *Provided*, That the creditor and the executor or administrator may agree before the

Proceedings when executor dissatisfied.

judge to submit the same to reference, in which case the determination of the referees shall be final.

Execution
how issued
when claim
disputed.

§ 35. When a claim shall be disputed in the course of the common law as aforesaid, execution shall not issue as in common cases, but the judgment of the court respecting the same shall be the amount of the claim, and the same shall be added to or deducted from the commissioners' report, as the case may require.

What ac-
tions may be
brought
against exe-
cutor.

§ 36. No action shall be brought against any executor or administrator after the estate shall be represented insolvent, except for debts privileged as aforesaid, unless the claim on which such action may be brought shall have been disallowed by the commissioners, or the executor or administrator having objection to the claim, shall consent to have the same settled by course of law, in which case the judgment of the court shall determine said claim and be reported by the commissioners as such.

Actions
when to be
continued.

§ 37. All actions brought against any executor or administrator, before the solvency of the estate is represented, shall be continued, until it shall appear whether said estate is solvent or not; and if found insolvent, the proceedings shall be conducted as herein provided.

When credi-
tor barred of
claim.

§ 38. If any creditor shall not make out his claim with the commissioners, within the time of their commission, or at the common law, or before referees in the manner this act provides, he shall be forever barred of his debt, unless such creditor shall find some other estate of the deceased not inventoried or accounted for by the executor or administrator before distribution.

Oath may be
required.

§ 39. The commissioners appointed by any judge to receive and examine the claims of creditors of the estates of any person deceased, when represented insolvent, are empowered to test the truth of any claim, by the oath or affirmation of the creditor; and the commissioners, when in session, may require of such creditor an oath to be administered by any one of them, in manner following: "You do swear, that you will make true answers to the questions which shall be asked you by the commissioners, relative to your claims against the estate of (naming the deceased.) insolvent debtor, now under consideration, so help you God:" and thereupon, such commissioners, or either of them, may inquire of the truth of any writing, demand, or the charge in any account exhibited as a claim against such estate, and whether the same, or any part of said claim, remain due and unpaid; and may put such other questions, relating thereto, as shall be material, and tending to discover the truth of such claim.

Form of
oath.

IV. *Partition of estates among heirs and devisees.*

After paying
debts, resi-
due of estate
to be divid-
ed.

§ 40. After the payment of debts, funeral expenses and the charges necessarily incurred in the settlement of the estate, are deducted, the judge of probate of the county where the deceased was an inhabitant or resident, at the time of his death, shall cause the residue, whether it be situated in the county in which he is judge, or any other county in the territory, to be divided, and partition thereof to be made among the children or heirs, as this act directs, unless some one or more of the children and grand-children shall have portions of the intestate's estate assigned them by him, in his life time, in which case such portions shall be taken into consideration and deducted from their shares in such partition.

§ 41. Any deed of land or tenement, made for love and affection, or where any personal estate, delivered to a child, shall be charged in writing by the intestate, or by his order, or a memorandum made thereof, and delivered expressly for that purpose, before two witnesses who were bid to take notice thereof, the same shall be deemed and taken an advancement to such child or children, of the lands, tenements or personal estate, within the intent of this act.

What deemed advancement to children.

§ 42. When the real estate can not be divided among all the children, or their legal representatives, without great prejudice to, or spoiling the whole, the judge of probate may order the whole to the oldest son, if he accept the same; or to any other of the sons, successively, on his refusal, he paying to the other children of the deceased their equal and proportionable shares of the true value thereof, upon an appraisal to be made by three disinterested freeholders, appointed by the judge for that purpose, and under oath, on giving good security to pay the same, in such convenient time as the judge shall limit and appoint, making reasonable allowance of interest in the interim, not exceeding seven per cent per annum.

When estate can not be divided without prejudice to all.

§ 43. When the real estate of an intestate will conveniently accommodate more of the children than the eldest son, or his legal representatives, the judge of probate may settle the same on as many of the children, (preference always being given to the sons,) as it will accommodate, without prejudice to, or spoiling the whole; or in case the intestate left no issue, the same may be assigned to one, or so many of the next of kin to the intestate in equal degree, or their legal representatives, as such estate will conveniently accommodate, without prejudice to, or spoiling the whole, preference being given to the male heirs among such as are of kin of equal degree; such person or persons making payment, or giving security to the other heirs, as provided in the preceding section.

§ 44. The respective judges of probate within this territory are hereby directed, when they make out their warrant for the division of the real estate of any person dying intestate, to and among the heirs, or for assigning the widow's dower, where such estate, or any part thereof, lies in common or undivided with the real estate of any other person, to direct the committee named in such warrant, first to sever and divide the intestate's estate from the estate with which it is in common as aforesaid; the said committee to give timely notice to all parties interested, to be present if they see cause; and such decision, so made and accepted by the judge, and duly recorded in the office of probate of the same county, shall be binding on all persons interested: *Provided*, That when any minors, or persons non compos or otherwise incapacitated to take care of their estates, are interested in either estates and out of the territory, guardians shall be appointed by the judge, to represent and act for such absent party before such division is made: *Provided also*, That before the order of such division issue, it may be made to appear to the judge of probate, that the several persons interested in such estate, if living within this territory, or the attorney of such as are absent and have attorneys residing within the territory, have been duly notified of such partition, and have had opportunity to make their exception to the same.

When estate to be divided lies in common with estate of another.

§ 45. When, and so often as any devisee, or his guardian, who holds any real estate in partnership with any person or persons, by

When judge may order

division of
estate among
devisees.

force of any last will and testament, shall make application to any judge of probate in the county where such estate lies, for a division thereof, it shall and may be lawful for such judge of probate to order the whole of the real estate so devised, (or that part of it the partition whereof is requested,) to be divided among the devisees, in proportion according to the will of the testator, by three or five good and discreet freeholders of the same county, to be appointed by, and sworn before the said judge, to the due performance of that service, notice being first given to all parties concerned to be present at the making of such partition, if they see cause; which partition or division, being returned into the probate office and approved by the judge, and then recorded, shall be valid, in law, to all intents and purposes, unless upon the appeal of any party aggrieved at the partition so made, the same shall be revised or altered before the district court.

Partition,
how made.

§ 46. In every case where real estate, devised by will, lies in common and undivided with other real estate, it shall and may be lawful for the judge of probate to order and direct the freeholders aforesaid, first to make partition between the estate given by will and any other land or real estate lying in common therewith, in the same way and manner as is before provided for dividing intestate estates from any other estates with which they may be in common: *Provided*, That no partition shall be made when the proportion belonging to the devisees, or any of them, shall, by the tenure of the devise, appear to be disputable or uncertain: *Provided also*, That where any of these interested are minors or persons non compos, or otherwise incapable of taking care of their estates, or out of the territory, some discreet and disinterested person shall be appointed by the said judge, as guardian for such persons, and to represent and act for such absent party.

When judge
may issue
warrant of
distress.

§ 47. When partition or division shall be made by any judge of probate of the real estate of any deceased person, agreeable to the method before prescribed, and any one or more of the interested parties shall neglect or refuse to pay their just proportion of the charge which may attend such division or settlement, it shall and may be lawful for the judge to issue a warrant of distress against any delinquent or delinquents, interested as aforesaid: *Provided*, An account of such charge be first laid before the judge, and the just proportion of the person interested, settled and allowed, they having been duly notified to be present at such settlement and allowance.

When mes-
sage cannot
be divided,
&c.

§ 48. When any message, tract of land or other tenement, shall be of greater value than either party's part of share in the estate to be divided, and cannot at the same time be subdivided, or part thereof assigned to one and part to another, without great inconvenience, the same may be settled and assigned to one of the parties, such party to whom the same may be assigned, paying such sum or sums of money to such party or parties, as by means thereof have less than their share of the real estate, as the committee appointed shall award.

V. Miscellaneous provisions relative to the settlement of estates.

Administra-
tion granted
of certain
goods, &c.

§ 49. No administration of goods or estate of any deceased person, not administered upon by a former administrator or executor, shall be granted, until it shall evidently appear to the judge of probate, by the oath of the party applying therefor, or otherwise, that there is such personal estate of the deceased, to the amount of fifteen

dollars or upwards, or debts of the like or greater value, due from the deceased's estate, unpaid. Nor shall any administration be originally granted upon the estate of any deceased person, after the expiration of twenty years from the death of such person.

§ 50. When any certain demand against the estate of any person deceased, arising from covenant, contract or agreement, shall commence and be in force after the term of four years, and which could not by virtue of such contract, covenant or agreement (although known) be claimed until after the said term, in such case, the claimant may, at any time within the said term of four years, file such further demand at the office of the probate court, where administration was granted, or the will approved; and such probate court shall direct the executor or administrator to retain in his hands, assets, (if sufficient there be,) to answer such demand, unless the heirs to such estate, or devisees thereof, or some one or more of them, shall give good and sufficient security, in the opinion of the judge of probate, for such executor or administrator, to respond to such demand; and when security is so given, such executor or administrator shall not be allowed to retain in his hands assets for the purpose aforesaid; the estate of the said deceased shall, however, be liable in the hands of the said heirs or devisees, or their heirs or assigns, to answer the said demand.

When demands may be filed in probate office within four years, &c.

§ 51. Where certain demands against the estate of any person deceased, arise by virtue of any covenant, contract or agreement, that could not be claimed until after the said term of four years, (such covenant, contract, or agreement, not being in full force during the said term,) the claimant in such case, unless he shall have filed the same in the probate court, as aforesaid, may have his remedy against those who inherit the estate of such person or devisees thereof, against whom the demand lies, if such claim be made within one year from the time of its becoming due, and not against the executor or administrator: *Provided always*, That nothing in this act shall operate to bar any action that may be commenced against an executor or administrator, with the will annexed, for the recovery of a legacy, bequest, gift or annuity, arising, accruing or becoming due, by virtue of any last will and testament; but the same may be commenced and prosecuted in the same way, time and manner, as they might have been had this statute never been made.

Remedy against heirs for demands against estate.

§ 52. When an executor or administrator shall exhibit a claim in writing, against his testator or intestate, to the judge of probate having cognizance thereof, for allowance, and the same shall be disputed by any person interested adversely in the allowance thereof, it shall be lawful for the said executor or administrator, and the legatees or heirs, whose interest will be affected by the issue thereof, to submit the determination of such claim to referees, who may be mutually agreed upon by the parties interested; and the court of probate before whom such submission is made, may receive, approve and allow the report of such referees, made in writing, pursuant to the submission, and decree accordingly: *Provided*, The submission be made in writing, and signed by all parties interested therein, or their agents duly authorized, thereunto; and when any parties are minors, by his or their guardians, duly nominated and appointed.

When executors' and administrators' accounts may be referred.

Report allowed.

§ 53. When a dispute shall arise respecting the use and improvement of real estate in the hands of the executor or administrator, and

Value of real estate, how ascertained.

the quantum he ought to credit in his account therefor, it shall and may be lawful for the judge of probate to appoint three disinterested persons living near the estate, to ascertain the true value thereof; and the report of them or a major part of them, made thereupon in writing, after hearing the parties, and accepted by the judge, shall be the sum the executor or administrator shall be charged with in his account, and no more.

Property to be set off for widow and minor children.

§ 54. The following property shall in all cases after the death of any person leaving a widow or minor children, or both, be set off under the direction of the judge of probate, for the sole and only use of such widow or minor children, and the same shall not be inventoried as a part of the estate of such deceased person, to wit: one cow, twenty sheep and the wool of said sheep, two hogs, all provisions actually laid in and necessary for the use of the family for one year, all necessary cooking utensils and clothing and one bed and bedding for every two persons in the family, all necessary household furniture according to the situation of the family, all bibles, prayer books, hymn books and school books actually used in the family, all the cloth manufactured in the family, not exceeding thirty yards, or the yarn therefor if not so manufactured, one large and one small spinning wheel, one loom, and one yoke of oxen and one horse, and such reasonable quantity of hay or other substance as may have been provided for them and the other live stock herein before mentioned, one cart or wagon and harness, and other useful and necessary farming utensils, not exceeding in value fifty dollars.

Widow to remain in dwelling house.

§ 55. Any widow shall have a right to remain in the dwelling-house of her deceased husband, free from any charge or rent, for one year after his death, if her dower be not sooner assigned to her.

VI. Of the assignment of dower.

When widow may sue for dower.

§ 56. When the heir or other person having the next immediate estate of freehold or inheritance, shall not within one month next after demand made, assign and set out to the widow of the deceased, her dower, or just third part of and in all lands, tenements and hereditaments, whereof by law she is or may be dowable, to her satisfaction, according to the true intendment of law, then such widow may sue for and recover the same by writ of dower, to be brought against the tenant in possession, or such persons who have or claim right or inheritance in the same estate, in manner and form as the law prescribes.

Damages awarded for refusal to assign.

§ 57. When judgment is rendered for any woman to recover her dower in any lands, tenements or hereditaments, reasonable damages shall be awarded to her from the time of the demand and refusal to assign to her reasonable dower, and a writ of seisin shall be directed to the sheriff or other proper officer of the county, in manner and form as is by law prescribed; and the sheriff or other officer unto whom, by law, such writ of seisin is directed, shall cause her dower in such estate to be set forth unto her by three disinterested freeholders of the same county, under oath, to be administered by any justice of the peace, to set forth the same equally and impartially, without favor or affection, as conveniently as may be.

Third part of rents assigned to widow in

§ 58. If estates of which a woman is dowable be entire, and no division can be made by metes and bounds, dower shall be assigned thereof in a special manner, as of a third part of the rent, issues or

profits, to be computed and ascertained in manner aforesaid; and no woman that shall be endowed of any lands, tenements or hereditaments, as aforesaid, shall commit or suffer any strip or waste thereon, upon penalty of forfeiting the part of the estate upon which such strip or waste shall be made, and the damages assessed for waste, to him, her or them, that have the immediate estate of freehold or inheritance, in remainder or reversion, by an action of waste to be brought therefor; and all tenants in dower shall maintain the houses and tenements, with the fences and appurtenances, whereof they may be endowed, in good repair during the term, and shall have the same as at the expiration thereof; and the writs of dower and seisin shall be in the following or equivalent forms:

certain cases.

Tenant not to suffer waste.

WRIT OF SEISIN.

Territory of Wisconsin, county, ss.

Form of writ of seisin

To the sheriff of said county, greeting:

Whereas who was the wife of late of in the county aforesaid, deceased, before our said district court for our county aforesaid, on the day of did recover seisin against of of one-third part of a certain messuage or tenement, with the appurtenances, situate in in the possession of said as her dower of the endowment of the said her certain husband, by our writ of dower, whereof she hath nothing; therefore, we command you that to the said full seisin of one-third part of the aforesaid messuage or tenement, with the appurtenances, you cause to be had without delay, to hold to in severalty, by metes and bounds: We command you also, that of the goods and chattels of the said within your said county, you cause to be paid and satisfied unto the said at the value thereof in money, the sum of for damages awarded her by our said court, for her being held and kept out of her dower aforesaid; and costs expended on this suit, with cents more for this writ; and thereof also satisfy yourself your own fees; and for want of goods and chattels of the said to be by him shown unto or found within your jurisdiction, to satisfy the same, you are hereby commanded to take the bod of the said and convey and deliver unto the keeper of the common prison of said county, who is hereby commanded to receive and keep the said in safe custody in the said prison until the aforesaid sums and legal expenses be paid and satisfied, or until he be delivered thence by due course of law. Hereof fail not, and make return of this writ, and how you shall have executed the same, to our next district court, to be holden at for our said county, on the first day of next.

Witness, judge of our said court, the day of in the year of our Lord 18

Clerk.

FORM OF WRIT OF DOWER.

Territory of Wisconsin, county, ss.

Form of writ of dower.

To the sheriff of said county, greeting:

In the name of the United States of America, you are hereby

commanded to summon if • may be found
 within your jurisdiction, to appear before the district court for the
 county of next to be holden at within
 and for the county aforesaid, on the first day of
 then and there, in our said court, to answer unto
 of in a plea of dower, for that, (here insert the declara-
 tion,) to the damage of the said as saith,
 the sum of dollars, lawful money of the United States,
 as shall then and there appear.

Witness, the Hon. of our said court, at the
 the day of in the year of our Lord one
 thousand eight hundred and

Clerk.

AN ACT concerning executors, administrators and guardians.

1. Powers and duties of executors, administrators and guardians.
2. Sales of real estate by executors, administrators and guardians.
3. Proceedings on suit of probate bonds.

I. Powers and duties of executors, administrators and guardians.

Will to be
 proved with
 in thirty
 days.

Penalty for
 neglect.

Executor
 refusing,
 judge to ap-
 point another
 person.

In case of
 embezzle-
 ment.

Executor to
 give bond,
 &c.

Bond may
 be given to
 pay debts,
 &c.

§ 1. If any executor of the last will of any person deceased, know-
 ing himself to be so named and appointed, shall not within thirty
 days next after the decease of the testator, cause such will to be pro-
 ved and recorded in the probate office of the same county where the
 deceased person dwelt, or present the will, and in writing declare his
 refusal, every executor so neglecting his or her trust and duty in
 that behalf, (without just excuse made and accepted by the judge of
 probate for such delay,) shall forfeit the sum of fifteen dollars a month
 from and after the expiration of the said thirty days, until he shall
 cause probate of such will to be made, or present the same as afore-
 said, every such forfeiture to be had and recovered by action of debt,
 one moiety for him or them that sue for the same, and the other
 moiety for the use of the legatee named in the same will; and upon
 any such refusal of the executor or executors, the judge of probate
 shall commit administration of the estate of the deceased, with the
 will annexed, unto the widow or next of kin of the deceased, to one
 or more of the devisees, or in case of their refusal, to one or more of
 the principal creditors as he shall think fit; and if any person shall
 alienate or embezzle any of the goods or chattels of any deceased
 person, before he or she shall have taken out letters of administra-
 tion, and exhibited a true inventory of all the known estates of the
 person deceased, every such person shall stand chargeable and be
 liable to the actions of the creditors, and other persons aggrieved as
 being executors in their own wrong.

§ 2. Every executor named in a will hereafter to be proved, and
 taking upon him the trust by proving the same, shall give bond to
 the judge of probate, with sufficient surety or sureties to return upon
 oath a true and perfect inventory of the estate into the probate office
 within three months; and to render an account of his proceedings
 thereon, in the same manner administrators are obliged by law to be
 bound, unless such executor or executors are residuary legatees, in
 which case bond may be given by him or them to pay the debts and

legacies of the testators; and in case such executor or executors shall refuse or neglect for the space of twenty days, to give bond as aforesaid, the judge of probate shall commit administration of the estate of such testator, with the will annexed, to some other person, in like manner as he may grant the same when the executor refuses the trust; and when the executor is under the age of twenty-one years at the time of proving the will, administration may be granted with the will annexed, during the minority of such executor, and when there are divers persons named executors in any will hereafter to be proved, none shall intermeddle and act but those who actually give bond as aforesaid; and any executor being a residuary legatee, may bring an action of account against his co-executor or executors of the estate of the testator in his or their hands, and may also sue for and recover his equal and proportionable part thereof; and any other residuary legatee shall have like remedy against the executors; and any person having a legacy given in any last will may sue for and recover the same at the common law.

Neglect to give bond.

When executor not to act.

§ 3. When the copy of any will proved and allowed in any of the states or territories of the United States, or in any foreign state or kingdom according to the laws thereof, shall be filed in any probate court in this territory, the filing and recording of such copy shall be of the same force and effect as an original will, and the executor shall give bond as upon an original will, or in default thereof administration may be granted with the will annexed as in other cases.

Copy of will proved in foreign state where filed.

§ 4. When the executor named in any will shall produce a copy as contemplated in the last preceding section, to any court within this territory for probate, a day shall be assigned for the hearing such application by the judge of probate, and notice shall be given by publication in a newspaper of the time when such application will be heard, for three successive weeks previous to such hearing, to the end that any person may appear and resist such application; and if no good cause be shown to the contrary, the said copy, duly authenticated, shall be admitted to record; saving an appeal in all cases to any person conceiving himself aggrieved by such decision, and such executors shall be liable in the same manner and to the same extent as executors appointed under an original will proved in such court.

Mode of granting probate of foreign will.

§ 5. Whenever an executor or administrator shall be appointed and qualified according to law, he shall make known the same by advertisement within three months, to be published in some newspaper in the territory, and by posting up notices in three or more public places in the town where the deceased was resident, or in such other manner as the court of probate may order or direct; and an affidavit of such publication, made by the executor or administrator, accompanied with a copy of such notice, and filed in the probate office, shall be admitted as evidence of the time, place and manner the same was given.

Executor, &c. to give notice, and proof how made.

§ 6. When any executor or administrator of any last will and testament, or administrator of an intestate's estate shall reside without the limits of this territory, and shall neglect or refuse after due notice from the judge of probate, to render his account and make settlement of such estate with the creditors, legatees or heirs, or their legal representatives, or when any executor or administrator shall become insane, or otherwise incapable of, or evidently unsuitable to discharge

Executor, &c. becoming insane, &c. administration granted to another.

the trust reposed in him, the judges of probate in their respective counties within this territory, are authorized and empowered in such cases to grant letters of administration with the will annexed or otherwise, as the case may require, to such other person within this territory as to the said judges may seem meet; and the administrator thus appointed, shall have the same power and authority to administer the estate of the deceased, not administered upon by the former executor or administrator, and be subjected to the same duties, in as full and ample manner, as if the executor or administrator, so removed or residing without the territory as aforesaid, were actually dead.

Effect of marriage of feme sole who is executrix.

§ 7. When a feme sole, shall jointly, with one or more persons, be appointed executrix or administratrix, and after such appointment, shall, during the life of other co-executor or co-administrator, marry, such marriage shall not make the husband an executor or administrator in her right, but shall operate as an extinguishment or determination of such woman's power and authority; and the other executor or executors, administrator or administrators, may proceed in discharging the trust reposed in them in the same way and manner as if such woman were naturally dead.

Executor's executor not to be executor of first testator.

§ 8. The executor of an executor shall not in consequence thereof become an executor of the first testator, but in every case administration may be granted if the circumstances of the estate require it, upon the goods and estate of the first testator unadministered upon, with the will annexed, to such person or persons as the judge of probate may think proper; any law, usage or custom to the contrary notwithstanding.

Proceedings when executor or administrator is wasting estate.

§ 9. When any legatee, creditor or person interested in the real or personal estate of a person who has heretofore died, or shall hereafter die, with a last will and testament, or any surety in an administration bond, shall declare on oath or affirmation, that he, she or they have sufficient cause to believe the executor or administrator, with or without the will annexed, are [is] wasting or mismanaging the estate of the deceased, and shall make application for security to the judge of probate of the proper county, the said judge is hereby authorized to examine the cause of complaint, and if to him it shall appear that the same is just, it shall be lawful for such judge to order such executor or executors, administrator or administrators to give such sufficient bond with sureties, or such further surety as such judge shall deem necessary according to the value of the estate; and in case such executor or executors, administrator or administrators shall refuse or neglect for the space of ten days, after due notice of such order to give security or further security so ordered, then the judge shall, when necessary, award new letters of administration, with or without the will annexed, as the case may require, to such person or persons, and upon such security as he shall think proper; and shall moreover order the said executor or executors and the first administrator or administrators to deliver over and pay to his or their successor or successors, every the goods, chattels, rights, evidences of debt, title deeds and money which were of the deceased, and which came to his or their hands and remain unadministered, and to account with such successor or successors for all and every of the same in such manner and time as the said judge shall direct, upon exami-

nation of all the circumstances of the case; and if such executor or administrator, so ordered to deliver and pay over as aforesaid, shall neglect or refuse to comply with the said order, the said judge shall, on motion proceed against him or them as is lawful in cases of contempt; and the succeeding administrator or administrators may proceed as if the executor or executors, administrator or administrators were executors in their own wrong, or never had letters of administration until the said property, evidence of debt and title deeds shall be fully obtained.

§ 10. No executor or administrator shall be compelled in any court of law, to defend any suit, that shall be commenced or instituted against him in said capacity, within the term of twelve months next after his taking upon him that trust, unless the same shall be instituted for the recovery of a demand that will not be affected by the insolvency of the estate, or the suit shall be instituted for the purpose of ascertaining a claim that is contested; and all suits brought within one year as aforesaid, (except for the purposes aforesaid,) shall be continued at the plaintiff's expense until that term, from the time the executor or administrator gave bond in the probate court for the faithful discharge of his trust, shall be fully expired; and in case the executor or administrator pays the demand, or will bring sufficient money into court for that purpose, and there leave the same for the plaintiff's use, or shall make the legal tender thereof to the plaintiff, within the year, he shall recover his costs.

Executors, &c. not compelled to defend suits in certain cases.

§ 11. No executor or administrator, against whom any suit shall be commenced after the expiration of one year from the time of his undertaking his trust, shall be entitled to a continuance of course, but shall be held to assign some good cause therefor, before he shall be allowed a continuance.

Suits brought after one year, not to be continued.

§ 12. Executors, administrators and guardians shall not be compelled to plead specially to any action or suit at law, brought against them in their said capacity, but may under the general issue, give any special matter in evidence.

Executors not compelled to plead specially.

§ 13. When any person who shall hereafter be appointed executor to any testament, shall at the time of the probate of the same, live without the territory, he shall, before the probate of the will whereby he is appointed, enter into bonds to the judge of probate for the county where the testator lived, with sufficient sureties, being inhabitants of the territory, for the faithful performance of the trust reposed in him; and if such executor refuse to enter into such bonds, administration shall be granted with the will annexed, in the same manner as if such executor declined the trust.

Foreign executor to give bond, &c.

§ 14. When any executor shall remove himself without this territory and become an inhabitant of some other state, place or kingdom, before his accounts shall be settled, and shall not upon being thereto required by the judge of probate where the will shall have been proved, come into this territory and settle his account, administration shall be granted de bonis non, with the will annexed, in the same manner as if such executor had died intestate; and he shall be answerable to such administrator for all the estate which shall have come into his hands; having credit for his just expenses, the debts he may have discharged, and legacies he may have paid.

Proceedings when executor removes and refuses to settle.

Administra-
tor may
bring action
against co-
administra-
tor.

§ 15. When two or more have letters of administration granted them of any intestate estate, and one or more of them take all or the greatest part of such estate into his or their hands, and refuse to pay the debts or funeral charges of such intestate, or refuse to account with the other administrator, then in such case it shall and may be lawful for such aggrieved administrator to bring his action of account against the other administrator or administrators, and recover his proportionable share of such intestate's estate as shall belong or appertain to him.

Limitations
of actions
against exe-
cutors, &c.

§ 16. No executor or administrator, who shall be appointed after the passage of this act, shall be held to answer to any suit that shall be commenced against him in that capacity, unless the same shall be commenced within the term of four years from the time of his accepting that trust: *Provided*, He give notice of the appointment in the manner prescribed by law.

When exe-
cutor may
bring action
for injury.

§ 17. It shall be lawful for any executor or administrator of any estate to commence and maintain in any court of law, having jurisdiction in this territory, either the action of trespass or trover, or both of the said actions, for any act done or performed to the estate of the deceased person, in the life time of the deceased, in the same manner and to the same effect as the deceased could, were the deceased living; any usage, custom or law to the contrary notwithstanding.

Suit may be
brought
against exe-
cutor before
justice.

§ 18. After a dividend shall be ordered by any judge of probate, or any estate represented insolvent by any executor or administrator, if such executor or administrator shall refuse or neglect, on demand, to pay over to any creditor of such estate, the full amount of such dividend, suit may be instituted therefor, before any justice of the peace, the same as in the other cases: *Provided*, the same does not exceed fifty dollars.

Debts of
mortgage of
deceased
mortgagee
when to be
assets, &c.

§ 19. Whenever any person or persons to whom any lands, tenements or hereditaments may be mortgaged for the payment of debts, or the performance of an [a] collateral promise or engagement whatever, shall decease before the recovery of seisin and possession of the lands, tenements or hereditaments mortgaged, then the debts due on said deed or mortgage, and the lands, tenements or hereditaments mortgaged by the same, shall be assets in the hands of executors, as personal estate, and the executors or administrators shall have the same control and power of disposal, of all the estate which the said deceased had in the lands, tenements and hereditaments mortgaged, as if they had been a pledge of personal estate; and executors and administrators may bring actions for the recovery of seisin and possession of lands, tenements and hereditaments, mortgaged as aforesaid; in which actions it shall be sufficient to declare on the seisin and possession of the testator.

Duty of exe-
cutors on re-
covering
possession
of mortgaged
premises.

§ 20. Whenever executors or administrators shall recover seisin or possession of lands, tenements or hereditaments mortgaged as aforesaid, the executors or administrators shall be seised and possessed of the estate so recovered, to the sole use and behoof of the widow and heirs of the intestate, or such devisees of the testator to whom such estate may be devised; and the court of probate may make distribution of the same as of personal estate, accordingly, unless the lands, tenements or hereditaments, mortgaged and recovered as aforesaid, shall be necessary for the payment of debts, legacies, annuities or charges of administration, and in that case the said executor or administrator

having obtained license in manner as by law appointed, shall have full right, power and authority to dispose and make sale of the whole or part of the lands, tenements or hereditaments recovered as aforesaid, as though the testator or intestate had died seised thereof; subject however to the right of redemption, in case such sale shall be made before such right shall be extinguished.

§ 21. After executors or administrators shall recover seisin and possession of any lands, tenements or hereditaments mortgaged to the testator or intestate, and before conveyance and assignment thereof, if any such mortgagor, his heirs, executors, administrators or assigns, shall within the time limited for redeeming the estate mortgaged as aforesaid, redeem the mortgaged premises, the executors or administrators shall in every instance be entitled to receive the redemption money, and are hereby authorized, empowered and directed to discharge the said mortgaged premises by release, quit claim or other legal conveyance.

Executors, &c. to receive redemption money and discharge mortgage.

§ 22. The goods and estates of each deceased person, in every joint contract hereafter to be made, whether obligation, covenant or other instrument under seal, promissory note, memorandum in writing or other contract, express or implied, or in any judgment on any contract hereafter to be made, shall be liable in the hands of his executors and administrators, for the payment thereof in like manner, and the creditor shall have the same remedy, and may have and maintain an action in law against such executors and administrators, in the same manner as if such contract had been joint and several.

Executors, &c. may be sued on joint contract of deceased.

§ 23. When any executor or administrator shall neglect or unreasonably delay to raise money out of the testator or intestate's estate, by collecting debts due to such estate, and selling the personal estate or real estate if need be, and he has power, or can obtain license to sell the same, or shall neglect to pay what he has in his hands, and by such neglect or delay shall subject the testator or intestate's estate, real or personal, to be taken in execution, the same shall be deemed waste and unfaithful administration in such executor or administrator.

Unreasonable delaying to collect debts, &c. deemed waste.

§ 24. Guardians appointed by any judge of probate of the estate of any idiot, lunatic, non compos or distracted person, shall give notice of their appointment, and are empowered to settle accounts, and receive, sue for and recover all just debts due the said idiot, lunatic, non compos or distracted person, from any person or persons whatsoever, and to manage and improve or divide the real estate in as full and complete manner as the said idiot, lunatic, non compos or distracted person might or could do before such lunacy; and shall also pay all just debts owing by such person which were contracted before such lunacy, out of the personal estate, or if insufficient, out of the real estate, being first empowered to make sale thereof in the same manner executors or administrators may in case of deceased persons; they shall also improve frugally and without waste any remaining estate of such idiot, non compos or distracted person, and apply the annual income or profits thereof for the comfortable maintenance and support of said idiot, non compos or distracted person, and of his or her family, if such there be; and they shall be liable for waste and mismanagement in the same manner as executors and administrators are or may be liable.

Powers and duties of guardians of idiots, &c.

II. Sales of real estate by executors, administrators and guardians.

Executors,
&c., when to
sell real es-
tate.

§ 25. When the goods and chattels belonging to the estate of any person deceased, or that may hereafter de cease, shall not be sufficient to answer the just debts which the deceased owed, or legacies given, upon representation, and the same being made to appear to the district or probate court of the county where the deceased person last dwelt, or in the county in which the real estate lies, the said court is authorized to empower and license the executor or administrator of such estate to make sale of all or any part of the houses, lands or tenements of the deceased, so far as shall be necessary to satisfy the just debts which the deceased owed at the time of his death, and legacies bequeathed in and by the last will and testament of the deceased, with the incidental charges; and every executor or administrator being so licensed and authorized as aforesaid shall, and may by virtue of such authority, make, sign and execute in due form of law, deeds and conveyances of such houses, lands or tenements, as they shall so sell; which instrument shall make as good a title to the purchaser, his heirs and assigns forever, as the testator or intestate, being of full age, of sane mind and memory, in his or her lifetime, might or could have given for a valuable consideration.

Court may
order sale of
estate of mi-
nor, &c.

§ 26. When it shall fully appear to either of said courts, by petition and representation of the friends or guardians of minors or persons non compos mentis, interested in the real estate of any deceased testator or intestate, that it would be for the benefit of such minors or persons non compos, that their interest should be disposed of, and the proceeds thereof be put and secured to them on interest, said court, after a full examination on oath of the petitioner or otherwise, may authorize some suitable person or persons to sell and convey such estate or part thereof, by deed duly acknowledged and recorded in the registry of deeds.

Real estate
of lunatics
subject to
payment of
debts.

§ 27. The real estate of lunatics, idiots, non compos or distracted persons, shall be subject to the payment of debts which were contracted before their distraction, and may be sold in the same manner the estate of deceased persons are, by order of courts, by the guardian of such lunatic, idiot, non compos or distracted person; and in case such idiot, lunatic or distracted person shall be restored to the use of his reason, the residue, if any, and remainder of his estate, real and personal, shall be returned and delivered to him, or in case of his death, to his heirs, executors or administrators.

When the
whole of es-
tate may be
sold.

§ 28. Whenever it shall be necessary that executors and administrators shall be empowered to sell some part of the real estate of testators or intestates, or for guardians to sell some part of the real estate of minors or persons non compos mentis, for the payment of just debts, legacies or taxes, or for the support or legal expenses of minors, or persons non compos, and by such partial sale the residue would be greatly injured, and the same shall be represented and made to appear to said court on petition and declaration, filed and duly proved therein by the said executor, administrators or guardians, the said court may authorize and empower such executors, administrators or guardians to sell and convey the whole, or so much of said real estate as shall be most for the interests and benefit of the parties concerned therein, at public auction, and good and sufficient deeds of convey-

ance to make and execute; which deed or deeds when duly acknowledged and recorded in the registry of deeds for the county where the real estate lies, shall make a complete and legal title in fee to the purchaser or purchasers thereof.

§ 29. The said court, previous to passing on any petition or representation for the sale of real estate, shall order due notice to be given to all parties concerned, or their guardians, who do not signify their assent to such sale, to show cause at such time and place as shall be appointed, why such license should not be granted; and in case any person concerned be not an inhabitant of this territory, nor have any guardians, agent or attorney therein, who may represent him or her, the said court may cause the said petition to be continued for a reasonable time, and the petitioner or petitioners shall give notice of said petition to such absent person, as the court may direct, or cause the same to be published in some newspaper in this territory three weeks successively.

Notice of petition to sell, how given.

§ 30. Executors, administrators, guardians or other persons authorized by order of court to sell real estate shall, previous to any sale being made, give bond to the judge of probate for the county in which such real estate lies, that he or she will observe the rules and directions of law for the sale of real estate, and that the proceeds of such sale shall be disposed of agreeably to the rules of law.

Person authorized to sell to give bond.

§ 31. Every such executor, administrator, guardian or other person, authorized as aforesaid, shall, previous to any sale, take before the judge of probate, or some justice of the peace, the following oath: "I, A. B. do solemnly swear, that in disposing of the estate lately belonging to I will use my best skill and judgment in fixing on the time and place of sale, and that I will exert my utmost endeavors to dispose of the same in such manner as will produce the greatest advantage to all persons interested therein, and that without any sinister views whatever." And the said executors, administrators, guardians or other person, shall return to the probate court a certificate of the same under the hand of the justice before whom such oath was taken.

To take an oath.

Form of oath.

§ 32. Every such person, before making sale of any real estate, or by order of court, shall give thirty days' public notice, by posting up notifications of such sale in the township where the lands lie, as well as where the deceased person last dwelt, and in the two next adjoining townships, and also in the county town of the county; and whoever will give most shall have the preference in such sale.

Thirty days' notice to be given.

§ 33. The affidavit of the executor or administrator, or the affidavit of such other person or persons as may be by them employed to post up such notifications, taken before the probate court, where such executor or administrator derived his authority to administer, within seven months next following the sale of the real estate, and there filed and recorded, together with one of the original advertisements of the time, place, and estate to be sold, or a copy of such advertisement, are hereby declared to be one mode of perpetuating the evidence that such notice was given, and also to make the originals, or copies thereof, admissible evidence in any court of law; and when the person employed by the executor or administrator to post up such notifications, resides more than ten miles distant from such probate office, his depositions respecting that matter, taken before a justice of

Affidavit of person posting notices to be evidence.

the peace, and filed in such probate court within the seven months aforesaid, shall have the same force and effect as if the same was taken before the probate court; and the printing a notification three weeks successively in such newspaper as the court who may authorize the sale, shall order and direct, shall be deemed equivalent to the posting up of notifications as aforesaid.

Guardian,
&c. to per-
petuate evi-
dence.

§ 34. Guardians and others, who, upon obtaining a license for the sale of real estate, are directed to give public notice before sale made, are hereby authorized to perpetuate the evidence that such notice was given, in the probate court, where the guardian or other person selling, is directed to account for the proceeds arising from the sale, in the same manner as provided for executors and administrators.

III. *Proceedings on suit of probate bonds.*

Execution to
issue on pro-
bate bond.

§ 35. When it shall appear, upon confession, verdict or otherwise, that the penalty in any probate bond is forfeited, to the court in which suit thereon may be brought, judgment thereon shall be entered and execution issued as hereinafter directed.

How judg-
ment to be
rendered.

§ 36. If on the hearing upon any such bond it shall be satisfactorily shown for whose particular use and benefit the money due thereon is to enure, judgment shall be rendered that the plaintiff in his said capacity (naming him) now have execution for being part of the penalty forfeited, and costs taxed for the use of A. B. a creditor or heir of E. F. deceased, (as the case may be.)

Who may
sue out ex-
ecution.

§ 37. The person to whose use judgment shall be rendered in the name of the judge of probate as aforesaid, may sue out execution thereon, and direct the service thereof on the real or personal estate as he may deem it necessary, and shall be deemed and taken as the plaintiff or creditor in such suit.

When several persons
entitled to
money re-
covered on
bond.

§ 38. If there are several persons to whose use the moneys recovered are to enure, there shall be as many separate and distinct judgments in form aforesaid, entered in the order in which their several claims may be prosecuted, not exceeding in all the amount of the penalty so forfeited.

Suit brought
at desire of
creditor of
deceased.

§ 39. When the suit is instituted at the desire of a creditor of the deceased, such creditor must first have his debt or damages ascertained by judgment of court, (unless the estate was insolvent,) and shall make it appear that a demand has been made of the administrator, and that he has refused or neglected to satisfy the same, or must show goods or estate of the deceased applicable to that purpose.

When estate
of deceased
is insolvent.

§ 40. If the estate is insolvent the creditor must produce a copy of the order of distribution of the estate of the deceased among the creditors, specifying each particular claim, and the dividend to which each are [is] entitled, and that a demand has been made of the administrator for his dividend or proportional share.

Suit when
brought by
heir.

§ 41. If an heir brings suit for his part of the personal estate, he must exhibit a copy of the decree of the probate court ascertaining its quantum; and that a demand therefor has been made of the administrator.

Writ what
to specify.

§ 42. In every instance under the three last preceding sections, the writ issued to recover the penalty of the administrator's bond shall specify to whose use and benefit the suit is instituted.

§ 43. When the administrator shall refuse or neglect to account upon oath, for such property as he may have received in such capacity, after being cited for that purpose by the probate court, execution shall be awarded against him for the full value of the personal property that may have come to his hands without any discount, abatement or allowance for charges and expenses of administration or debts paid.

Proceedings when administrator neglects, &c.

§ 44. When it shall appear that the administrator shall have received the personal estate of an intestate, and shall not have exhibited upon oath a particular inventory thereof, execution shall be awarded against him for the whole penalty of the administration bond, to be distributed among the parties interested according to the directions of law.

Execution to issue against, &c.

§ 45. The like judgment and proceedings, so far as the same can properly be, shall be had upon bonds given by executors, guardians and others, to the judge of probate in their said capacity.

Proceedings against executors.

§ 46. All bonds given in the district or supreme court, sitting as a court of probate, shall be given to the territory of Wisconsin for the use of the creditors, heirs, legatees or wards, as the case may be, and shall be liable to suit in the same manner as if taken in the name of the judge of probate, and in such case the same proceedings shall be had as prescribed.

Probate bonds how given.

§ 47. Suits on probate bonds shall be brought in the district court by any person aggrieved as creditor, heir, legatee, ward or otherwise, upon the certificate of the judge of probate, that such bond has become forfeited.

Suits on bonds how brought.

§ 48. When a suit has been instituted on any probate bond, and the principal named therein is a resident of the territory, and has not been summoned, or refuses to appear, the court may, at the request of the securities, continue such suit, if such request appear reasonable or expedient, to enable such securities to procure an attachment against the property or person of such principal, which said court is hereby authorized to issue in such form as the said court shall direct.

Attachment when to issue against principal, &c.

§ 49. In case such principal, after being attached or summoned as aforesaid, such attachment having been served at least days before the return thereof, shall fail to appear and answer, the court is hereby authorized to render judgment against him and issue execution forthwith: *Provided*, That if such principal was not named in the original summons, then a summons shall issue previous to any attachment against his property.

Execution issued if principal does not appear.

AN ACT concerning justices of the peace.

ARTICLE FIRST.

Appointment and qualifications.

§ 1. There shall be appointed in each of the counties of this territory, as many justices of the peace as the public good may require, whose term of service shall continue two years, unless sooner removed by the governor.

Justices appointed and term of service.

§ 2. No person shall be appointed to the office of a justice of the peace who is not a citizen of the United States, and who shall not have resided in the county for which he is appointed six months next

Who may be appointed.

before his appointment, nor shall the clerk of the district court or his deputy hold or execute the office of justice of the peace.

Justice to
take and file
oath.

§ 3. Every justice of the peace hereafter appointed, before he enters on the duties of his office, and all justices of the peace now in office, who have not complied with the requisitions of this act, shall take an oath or affirmation to support the constitution of the United States, and to administer justice without respect to persons, and faithfully to discharge and perform all the duties of his said office, according to the best of his abilities and understanding, which oath or affirmation shall be made in writing, and filed and recorded in the office of the clerk of the district court of the county in which such justice of the peace may reside; and shall execute to the treasurer of the same county a bond, with two or more sureties, to be approved of by the treasurer of the county, and filed and recorded in the office of the said clerk of the district court, in the penal sum of five hundred dollars, with the condition following, to wit: "The condition of this bond is such, that whereas A. B. has been appointed a justice of the peace in the county of _____ Now, therefore, if the said A. B. shall pay to each and every person such sums of money as he, the said justice, shall become liable to pay, for or on account of any money which may come into his hands as a justice of the peace, for any such person, together with interest and costs, if any accrue, after demand thereof made by any such person, his agent or attorney, after such moneys shall have actually come into the hands of such justice, then the above to be void, otherwise to be in full force, virtue and effect." And the said justice and his sureties shall be liable on said bond to each and every person for whom such justice shall collect money and refuse to pay the same; and it shall be competent for any person to whom such justice and his sureties may have become liable as aforesaid, to sue such justice and his sureties, or any one of them, in an action for money had and received; and on proof that the said justice [has] neglected or refused to pay any such sum of money by him collected as aforesaid, then, and in every such case, judgment shall be given against the parties defendant in such suit, for the money so collected, together with interest and costs, according to the condition of such bond: *Provided always*, That a copy of such bond, under the official certificate of the clerk with whom the same is filed and recorded, shall be legal evidence of the contents and execution thereof in all courts.

To give
bond.

Form of
bond.

Liability of
justice and
sureties.

Copy of
bond evi-
dence.

Clerk to cer-
tify accep-
tance of
commission.

Liability of
justice if not
qualified.

If county di-
vided how
justice to
act.

§ 4. The clerk of the district court, when he records the bond and oath of office of any justice of the peace in the manner pointed out by this act, shall certify to the governor the acceptance of his commission by such justice.

§ 5. Any person commissioned by the governor, who shall act as a justice of the peace, without having qualified according to law, knowing that he was not so qualified, shall, on conviction thereof by an indictment, be fined in a sum not exceeding five hundred dollars.

§ 6. When a county shall be divided, any justice of the peace of the original county, whose place of residence may be embraced within the limits of the new county, shall continue to discharge the duties of justice of the peace in such new county until his commission expire.

§ 7. Every justice of the peace, who shall be convicted of bribery, perjury, or any other infamous crime, or convicted of any wilful misdemeanor in office, by indictment, such conviction shall constitute a removal from office. Removal if convicted of bribery.

§ 8. All resignations of justices of the peace shall be in writing, and addressed to the governor. Resignations how made.

§ 9. If any justice of the peace resign, or be removed from office, or remove from the county for which he shall have been appointed, or if his term of office be in any manner terminated, it shall be the duty of such justice to deliver all dockets, records, books, papers and documents appertaining to his office, or relating to any suit, matter or controversy committed to him in his official capacity, to the nearest justice in the same county, who may thereupon proceed to hear, try and determine such matter, suit or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such matter or suit was commenced to have done. When term expires, to deliver dockets, &c.

ARTICLE SECOND.

Powers and jurisdiction of justices.

§ 1. Justices of the peace shall have power and jurisdiction throughout their respective counties as follows: Justice to preserve the peace.

1st. Jointly and severally [to] cause to be kept all laws made for the preservation of the peace.

2d. To cause to come before them, or any of them, persons who shall break the peace, and commit them to jail or bail them, as the case may require. Who to arrest.

3d. To arrest and cause to come before them, persons who attempt to break the peace, persons who keep houses of ill fame, or frequenters of the same, or common prostitutes, and compel them to give security for their good behaviour, and to keep the peace.

§ 2. If such persons refuse or neglect to give security, they shall be committed until they find the same, or until discharged by due course of law. When to commit.

§ 3. Every recognizance so taken for the keeping of the peace, or for good behaviour, or for both, and every such commitment shall be certified to the next district court of the county. Recognizance to be certified.

§ 4. In the following cases, and no others, a justice of the peace may punish for contempt, persons guilty of the following acts: First, disorderly, contemptuous and insolent behaviour towards such justice whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which shall tend to interrupt such proceedings, or to impair the respect due to his authority. Second, any breach of the peace, noise or other disturbance, tending to interrupt the official proceedings of such justice. Third, resistance or disobedience of any lawful order or process made or issued by him. Power to punish for contempts.

§ 5. Punishments for contempts in the foregoing cases, may be by fine, not exceeding twenty dollars, or by imprisonment in the county jail, not exceeding two days, at the discretion of the justice; but no person shall be committed to [jail] for the non-payment of a fine. Contempts how punished.

§ 6. No person shall be punished for contempt before a justice of the peace, until an opportunity shall have been given him to be Defence of contempt may be made.

heard in his defence, and for that purpose the justice may issue his warrant to bring the defender before him.

Record of conviction how made.

§ 7. Upon the conviction of any person for contempt, the justice shall make up a record of the proceedings on such conviction, stating the particular circumstances of the offence, and the judgment rendered thereon.

Warrant what to state.

§ 8. The warrant of commitment for any contempt, shall set forth the particular circumstances of the offence, or it shall be void.

Power to grant subpoenas.

§ 9. Justices of the peace are empowered to grant subpoenas for witnesses, in all matters submitted to referees and arbitrators, and in all cases where it may be necessary for taking depositions.

Jurisdiction of justice.

§ 10. Every justice of the peace shall have jurisdiction co-extensive with the county for which he is appointed, of all actions of debt, covenant and assumpsit, and all other actions founded on contract; of trespass and trespass on the case, for injuries to persons, or to real and personal property, wherein the debt or balance due or damages claimed shall not exceed fifty dollars, inclusive of interest; all actions of replevin when the thing demanded or claimed does not exceed fifty dollars; for any penalty given by any statute of this territory when the amount shall not exceed fifty dollars; and to take and enter judgment on the confession of a defendant.

When debt does not exceed fifty dollars.

When not to have cognizance.

§ 11. No justice of the peace shall have cognizance, 1st, against an executor or administrator, for any debt or demand due from the testator or intestate; 2d, of any action of slander, malicious prosecution or false imprisonment; nor, 3d, where the title to lands or tenements shall come in question.

ARTICLE THIRD.

Commencement of suits, service and return of process.

Justice to keep a docket; and what to enter therein.

§ 1. Every justice of the peace shall keep a docket, in which he shall enter, 1st, the title of all causes commenced before him; 2nd, the time when the first process was issued against the defendant, and the particular nature thereof; 3d, the time when the parties appeared before him, either without process or upon the return of process; 4th, a brief statement of the nature of the plaintiff's demand and the amount claimed, and if any set-off was pleaded, a similar statement of the set-off and the amount estimated; 5th, every adjournment, stating at whose request and at and for what time; 6th, the time when the trial was had, stating whether the same was by jury or by the justice; 7th, the verdict of the jury, and when rendered; 8th, the judgment rendered by the justice, and the time of rendering the same; 9th, the time of issuing execution, and the name of the officer to whom delivered, and an account of the debt, damages and costs, and the fees due to each person separately; 10th, the fact of an appeal having been made and allowed, and when made and allowed; 11th, satisfaction of judgment when made; 12th, and such other entries as may be material.

How suits instituted.

§ 2. Suits may be instituted before a justice, either by the voluntary appearance and agreement of the parties, or by the usual process.

Security required of plaintiff.

§ 3. Any justice of the peace in this territory, may in all actions hereinafter instituted, either before or after the process shall issue, at his discretion, require of the plaintiff in such action to give security

for the costs, and the person giving such security, shall sign a memorandum in writing to that effect, which such justice shall keep as a part of the record in the case; and if the plaintiff refuse to give such security, the justice shall dismiss the suit.

§ 4. When any suit shall be founded on any instrument of writing purporting to have been executed by the defendant, such instrument shall be filed with the justice before any process should [shall] be issued, unless such instrument be alleged to be lost or destroyed; then the plaintiff shall file with the justice the affidavit of himself or some other credible person, stating such loss or destruction, and setting forth the substance of such instrument.

Writing to be filed with justice in certain cases.

§ 5. If any suit or set-off be founded upon any lost or destroyed instrument of writing, the party relying upon such lost instrument shall be required upon the trial and hearing of the cause to prove such loss or destruction by his own oath, or by other competent testimony; and if upon such trial or hearing it appears that the same was intentionally put away or destroyed, the demand or set-off, founded upon such instrument shall be rejected.

If lost, loss to be proved.

§ 6. In any suit founded on an account commenced by warrant or attachment, a bill of the items of such account shall be filed with the justice before any process shall be issued in the suit, and at least three days before the return day of the summons, provided such suit be commenced by summons.

Bill of items to be filed.

§ 7. All process issued by justice of the peace shall run, "In the name of the United States," be dated on the day it issued, and shall be signed by the justice granting the same, and be directed to the sheriff or any constable of the proper county.

How process shall run, &c.

§ 8. In all cases not otherwise especially provided for, the first process in suits shall be by a summons, commanding the officer to summon the defendant to appear before such justice at the time and place to be expressed in such summons, not less than six nor more than fifteen days from the date thereof, to answer to the plaintiff in the plea, in the same summons to be contained; which summons shall be served at least six days before the time of appearance therein mentioned, by reading the same to the defendant, and delivering a copy thereof to him, if such defendant shall be found, and if not found, by leaving a copy thereof at his or her usual place of abode in presence of some one of the family of suitable age and discretion, who shall be informed of its contents.

First process to be by summons, its contents.

How served.

§ 9. Every constable or sheriff serving any process authorized by this act, shall return thereon in writing the time and manner of service, and shall sign his name to such return.

Officer's return.

§ 10. A justice of the peace shall issue a warrant in every case where he is satisfied from the affidavit of the person demanding the same, or from any other person, that the plaintiff has a subsisting and unsatisfied cause of action against the defendant, and that the defendant is a non-resident of the county, or is about to remove from the county with intent not to return thereto, or that the plaintiff will be in danger of losing his debt or demand unless such warrant be granted.

When justice may issue warrant.

§ 11. A warrant shall command the sheriff or constable to take the body of the defendant and bring him forthwith before such justice to answer the plaintiff in a plea in the same warrant to be men-

Contents of warrant.

tioned, and shall further require the sheriff or constable after he shall have arrested the defendant, to notify the plaintiff of such arrest.

How warrant to be served.

§ 12. A warrant shall be served by arresting the defendant and taking him before the justice who issued the same; but if such justice be, on the return thereof, absent or unable to try the cause, or if it be made to appear to the justice by the affidavit of the defendant that said justice is a material witness for the defendant in the case, or is near of kin to the plaintiff in suit, stating therein the degree, the officer shall forthwith take the defendant to the nearest justice of the same county, who shall take cognizance of the cause, and proceed therein, as if the warrant had been issued by himself.

How long defendant detained.

§ 13. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer until the justice shall direct his release; but in no case shall the defendant be detained longer than twelve hours from the time he shall be brought before the justice, unless within that time the trial of the cause has commenced, or unless it has been delayed at the instance of the defendant.

Justice may empower persons to serve process.

§ 14. Every justice issuing any process authorized by this act, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same by an endorsement on the process to the following effect: "At the request and risk of the plaintiff, I authorize _____ to execute and return this writ. E. F., Justice of the Peace." And the person so empowered, shall thereupon possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

When suit to be discontinued.

§ 15. If at any time after the commencement of a suit the defendant pay to the officer the full amount of the claim, and the cost which may have then accrued, the suit shall be discontinued. The justice, before whom the suit is brought, shall endorse the amount upon the summons or warrant, for which suit is commenced, including interest and costs.

Penalty for failing to execute process.

§ 16. If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make false return, such officer, for every such offence, shall pay to the party injured ten dollars, and all damages such party may have sustained by reason thereof, to be recovered by an action of debt founded upon this statute.

ARTICLE FOURTH.

Of the appearances and pleadings of parties and of adjournments.

Who to appear for infant.

§ 1. Any plaintiff in any suit, except persons under twenty-one years of age, may appear and conduct his suit either by agent or in person.

Next friend appointed for infant.

§ 2. No suit shall be instituted by an infant plaintiff until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person who shall consent thereunto in writing, to be named by such plaintiff to act as his next friend in such suit, who shall be responsible for the costs therein.

§ 3. Every defendant in a suit may appear and defend the same, Who may appear for def't. either in person or by agent, except persons under twenty-one years of age.

§ 4. After the service and return of process against an infant defendant, the suit shall not be further prosecuted until a guardian for such defendant shall have been appointed. Infant defendant to have guardian appointed. Upon the request of such defendant, the justice shall appoint some person who will consent thereto in writing, to be guardian of the defendant in defence of the suit; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian; and the consent of such guardian or next friend shall be filed with the justice, and the guardian for the defendant shall not be liable for any costs in the suit.

§ 5. A party authorized to appear by agent may appoint any person to act as such agent; and the authority of the agent may be either written or verbal, and shall in all cases, when the justice requires proof, be proven either by the agent himself or by other competent testimony, unless admitted by the opposite party. Party may appear by agent.

§ 6. Upon the return of a summons duly served, the justice shall wait one hour after the time specified in such writ for the appearance of the parties, unless they sooner appear. How long justice to wait for parties.

§ 7. When both parties first appear before the justice, either upon the return of process, or upon their voluntary appearance without process, the justice shall, on the application of the defendant, and may without such application, require of the plaintiff a brief verbal statement of the nature of his demand. To require statement of demand.

§ 8. If in a suit for a trespass upon any lands or tenements, the defendant shall justify, by a plea of title, the justice shall immediately make an entry of it in his docket, shall cause [cease] all further proceedings in the case, and certify and return to the district court of the county, a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit, in the same manner and within the same time as upon an appeal. When defendant pleads title to lands.

§ 9. Upon the filing of the proceedings and the papers in the office of the clerk, the court shall become possessed of the cause, and proceed therein to final judgment; but upon the trial in such court, the plaintiff shall only be required to prove himself entitled to, or in possession of the lands and tenements on which the trespass is alleged to have been committed, and no other bar to the action shall be pleaded by the defendant, except the plea of title. 1b.

§ 10. A justice of the peace, on the application of either party, with good cause shown, may adjourn a cause from time to time not exceeding ninety days in the whole, and may adjourn for a longer period with the consent of both parties. A justice of the peace may without the application or consent of either party, if it be necessary, adjourn a cause not exceeding three days, for any one adjournment, but a justice shall in no case adjourn a cause commenced by warrant upon his own motion. When justice may adjourn cause.

§ 11. No adjournment after the first shall be allowed upon the application of a party, unless such party satisfy the justice by his own oath, or affidavit of some other person, that he cannot safely pro- 1b.

ceed to trial for want of some material testimony or witness, that he had used due diligence to obtain the same, and that he believes if an adjournment be allowed, he will be able to procure such testimony or witness in time to be used upon trial.

Time of adjournment.

§ 12. Every such adjournment shall be for such reasonable time as will enable the party to procure such testimony or witness, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

Adjournment when to discharge defendant.

§ 13. If a cause commenced by warrant be adjourned by the consent of both parties, or on the application of the plaintiff, the defendant shall be discharged from custody.

When cause adjourned on notice of defendant.

§ 14. But if such cause be adjourned upon the application of the defendant, he shall continue during the time of the adjournment in custody of the officer, unless he shall enter into recognizance before the justice, with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned that if judgment be given against him in the suit, and execution be issued against his person, he will render himself up on such execution before the return day thereof, or in default thereof, that he or his security will pay the judgment so recovered.

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§ 15. If any such recognizance shall have been given upon any prior adjournment, it shall not be necessary to enter into any recognizance upon a subsequent adjournment, unless such recognizance be required by the justice, or the bail of the defendant in such prior recognizance.

Plaintiff what to show in writs against security.

§ 16. In any suit, brought upon such recognizance, the plaintiff shall not be entitled to recover unless he show an execution upon the judgment obtained in the suit in which such adjournment was had, duly issued, within six days after the time when the same could have been issued against the person of the defendant, and a return thereon, that such defendant could not be found.

ARTICLE FIFTH.

Of witnesses and depositions.

Subpoena how served.

§ 1. A subpoena may be served by any person, by reading it to the witness or by delivering a copy thereof to him.

When justice may issue attachment for witnesses.

§ 2. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person, duly subpoenaed to appear before him in a suit, shall have failed without a just cause to attend as a witness in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness: *Provided however,* That no attachment shall issue against a witness unless his mileage and one day's attendance has been tendered or paid in advance.

How served, and who to pay fees.

§ 4. Every such attachment shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause to the satisfaction of the justice, for his omission to attend, in which case the party requiring such attachment, shall pay all costs of such attachment.

§ 4. Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for damages which such party may have sustained by his non-appearance: *Provided*, That said witness had one day's attendance and his mileage tendered or paid to him in advance.

Liability of witness for non-attendance.

§ 5. Either party in any civil suit depending before a justice, may upon notice, cause the deposition of any witness therein, to be taken by any judge or justice of the peace of any county in this territory, where the said witness may be.

Depositions how taken.

§ 6. The depositions shall be taken, certified and returned according to the law of the territory, concerning depositions.

§ 7. The justice shall allow every deposition taken and returned according to the provisions of this act, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally in court, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness whose deposition is offered,

When depositions may be read on trial.

1st. Is dead, or resides out of the county; or,

2d. Is unable, or cannot safely attend before the justice on account of sickness, age or other bodily infirmity.

3d. Has gone out of the county without the consent or collusion of the party offering the deposition.

ARTICLE SIXTH.

Of judgments on non-suits, and by default, and of trials.

§ 1. If either party shall fail to appear within one hour after the time specified for the return of the process, or after the hour of adjournment, the justice shall proceed to hear the proofs of the party present, and render judgment thereon accordingly.

When party fails to appear.

§ 2. In every action to be brought, by virtue of this act, it shall be lawful for either of the parties to the suit, or the attorney of either of them, after issue joined, (and before the court shall proceed to inquire into the merits of the cause,) to demand of said court, that said action be tried by a jury of six jurors, on first paying to the justice the jury fees in advance, which shall be taxed against the party losing, and upon such demand, the justice shall direct the sheriff or any constable of the county who may be present, or if no officer be present, the justice may appoint a suitable person to perform the duties required by this section, to whom he shall administer the following oath or affirmation: "You do solemnly swear or affirm (as the case may be) that you will perform the duties required of you, according to the best of your abilities, without partiality to either party." The person so sworn shall write down the names of eighteen persons, being inhabitants of the county, and possessing the qualifications necessary to constitute jurors in a court of record, from which list each party may strike out alternately six names; and in case of the absence of either party, or his refusal to strike out, the justice shall strike out of the said list six names, and shall thereupon issue a venire facias, requiring the officer to summons the six persons whose names remain upon the above mentioned list, to appear at the time and place therein mentioned, to serve as jurors, for the trial of the cause, to be named in said venire facias: *Provided*, That if any of

May have jury by advancing fees.

Mode of proceeding if jury demanded.

May issue venire facias.

- Talesmen to serve.** said jurors shall not attend, at the time so summoned to appear, or in case there should be legal objections raised to any of those who shall appear, it shall be the duty of the officer to summon a sufficient number of talesmen to supply the deficiency. The jurors so selected shall take the following oath or affirmation: "You and each of you do solemnly swear (or affirm) that you will well and truly try the matter of difference between plaintiff, and defendant, and true verdict give, according to law and the evidence given to you in court, so help you God;" and after having been sworn, they shall sit together and hear the several proofs and allegations of the parties, which shall be delivered in public, in their presence. And to each witness on any trial, the justice shall administer the following oath (or affirmation) to wit: "You do swear in the presence of Almighty God, (or affirm) that the evidence you shall give in this matter of difference between plaintiff, and defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God;" and after hearing the proofs and allegations, the jury shall be kept together, in some convenient place, until they all agree upon a verdict, or be discharged by the justice, and for which purpose a proper officer shall be sworn or affirmed, to whom the said justice shall administer the following, to wit: "You do swear in the presence of Almighty God, that you will, to the utmost of your ability, keep every person sworn in this inquest together, in some private convenient place, without drink, except water; you will not suffer any person to speak to them, nor speak to them yourself, unless by order of the justice, except it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict, or are discharged by the court, so help you God." And when the jurors have agreed on their verdict, they shall deliver the same to the justice in the same court, who is hereby required to give judgment thereupon, and to award execution in manner hereinafter directed.
- Oath of witnesses.** § 3. Whenever a justice shall be satisfied that a jury sworn in any civil cause before him, after having been out a reasonable time, cannot agree on their verdict, he may discharge them and issue a new venire, unless the parties consent that the justice may render judgment.
- Jury kept together.** § 4. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars.
- Oath of officer.**
- When new venire issued.**
- Penalty for non-attendance of juror.**

ARTICLE SEVENTH.

Of judgment, and filing transcripts thereof, and of the stay of executions.

- Justice not to take confession, except, &c.** § 1. No confession shall be taken, or judgment rendered thereon, unless the following requisites be complied with:
- 1st. The defendant must personally appear before the justice; or,
 - 2d. The confession must be in writing, signed by the defendant, attested by two witnesses, and filed with the justice.
- When mutual judgments may be set off.** § 2. If there be mutual justices' judgments between the same parties, upon which the time of appealing has elapsed, on which there is no existing execution, one judgment on the application of

either party, and reasonable notice given to the adverse party, may be set off against the other, by the justice before whom the judgment, against which the set-off is proposed, may be.

§ 3. If the judgment proposed as a set-off, was rendered before another justice, the party proposing such set-off must produce before the justice a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that it is unsatisfied in whole or in part, and that there is no appeal or existing execution thereon, and such transcript was obtained for the purpose of being set off against the judgment to which it was offered as a set-off. The justice granting such transcript, shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed, unless such transcript shall be returned with the proper justice's certificate thereon, that it has not been allowed in set-off.

Mode of proceeding.

§ 4. If any justice shall set off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment rendered by another justice to be set off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

§ 5. If, previous to joining issue in any cause, the defendant, his agent or attorney, shall make affidavit that the justice before whom the same is pending, is a material witness for such defendant, without whose testimony he cannot safely proceed to a trial thereof, or if it shall be proven that the justice is near of kin to the plaintiff, then, and in such case, the said justice shall transfer said suit, and all other [the] papers appertaining to the same, to some other justice of the same county, who may thereupon proceed to hear, try and determine the same, in the same manner as it would have been lawful for the justice before whom the said suit was commenced, to have done.

Proceedings when justice is witness, or of kin to plaintiff.

§ 6. In cases where a plaintiff shall be non-suited, or withdraw his action, or where judgment shall have been confessed, and in all cases where a verdict shall be rendered, or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment, and shall enter the same in his docket. In all other cases he shall render judgment, and enter the same in his docket, within three days after the cause shall have been submitted to him for his decision.

Judgment how rendered and docketed.

§ 7. If any sum be found in favor of a party, either by verdict of a jury, or upon hearing of the cause before a justice,* exceeding the sum for which a justice is authorized to give judgment, such party may remit or release the excess, and take judgment for the residue.

If sum due exceed jurisdiction of justice.

§ 8. The execution upon a judgment by a justice of the peace may be stayed in the manner hereinafter provided, and for the following periods of time, to be calculated from the date of the judgment.

Execution may be stayed.

1st. If the judgment be for a sum not exceeding ten dollars, exclusive of costs, one month.

2d. If it be for any sum above ten dollars, and not exceeding thirty dollars, two months.

3d. If it be for any sum above thirty dollars, exclusive of costs, three months; but if all the parties to the judgment agree upon any other time, the stay shall be for the time so agreed upon.

Some person to enter recognizance.

§ 9. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after rendering (of) the judgment, enter into a recognizance before the justice to the adverse party, in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment at the expiration of the stay.

Form of recognizance.

§ 10. Such recognizance must be signed by the person entering into the same, and may be in the following form:

"I, _____ acknowledge myself indebted to _____
in the sum of _____ dollars, to be void upon this condition:
Whereas _____ obtained a judgment before _____ a
justice of the peace of _____ township, in _____
county, on the _____ day of _____ 18 _____ against
_____ now, if such judgment shall be paid at the expiration of _____
months from the time it was rendered, this
recognizance shall be void.

A. B."

If judgment not paid, execution to issue.

§ 11. If at the expiration of such stay the judgment be not paid, the execution shall issue against both principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of the money collected by him on the execution, was collected by him from the bail, and the time when the same was received.

When bail entitled to judgment.

§ 12. After the return of such execution, the bail shall be entitled, on motion, to a judgment before the justice, for the amount collected from him in satisfaction of such execution, with interest thereon at twelve per cent per annum; and such return of the officer upon motion, shall be evidence of the facts therein stated. No motion shall be made after three months from the return of the execution.

When judgment stayed after execution issued.

§ 13. If a judgment be stayed in the manner above prescribed, after an execution has been issued thereon, the justice shall revoke such execution in the same manner, and with like effect, as he is hereinafter directed to revoke an execution after an appeal has been allowed; and if the defendant has been committed, shall order him to be discharged from custody.

Justice to give transcript of judgment, &c.

§ 14. Every justice, on the demand of any person in whose favor he shall have rendered judgment for more than ten dollars, exclusive of costs, shall give to such person a certified transcript of such judgment; and the clerk of the district court of the same county in which the judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the district court judgments and decrees, and shall note therein the time of filing such transcript.

Judgment to be lien on real estate.

§ 15. Every such judgment, from the time of such filing of the transcript thereof, shall have the same lien on the real estate of the defendant in the county, as a judgment of the district court of the same county, shall be equally under the control of the district court, and shall be carried into execution in the same manner, and with

the like effect, as the judgments of such district court; but no execution shall be issued thereon out of the district court until an execution shall have been issued by a justice, and returned that the defendant has no goods or chattels whereon to levy the same.

ARTICLE EIGHTH.

Of executions, and proceedings thereon.

§ 1. Upon every judgment rendered by a justice, execution shall be issued by such justice in the manner hereinafter prescribed, at any time upon demand. Execution to be issued.

§ 2. In the following cases, execution may be issued by the justice against the person of the debtor, and in no other. When execution may issue against body of debtor.

1st. When the debt is founded on a contract, and the creditor shall prove to the satisfaction of the justice that the debtor has property sufficient to satisfy the judgment, over and above that which is by law exempt from being taken on execution, which cannot be come at to be levied upon, and the debtor shall refuse to assign or deliver the same to the creditor, or so much thereof as shall be necessary to satisfy the judgment; and

2d. When the action in which judgment is rendered is founded in tort.

§ 3. The execution shall command the officer to levy the debt or damages, together with the interest thereon, and the costs of the goods and chattels of the person against whom the execution shall be granted, (his arms and accoutrements excepted, and also such other articles as are exempted by law from execution,) and to pay the money within thirty days from the date, to the justice who issued the execution, to render to the party who recovered the same; and if the execution be issued against a male person in case where imprisonment is authorized by law, it shall command the sheriff or constable that if no goods or chattels can be found, or not sufficient to satisfy such execution, then to take the body of the person against whom the execution shall be issued, and convey him to the common jail of the county, there to remain until such execution shall be satisfied and paid, or he be otherwise discharged according to law. What execution to command officer to do.

§ 4. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt or damages and costs, separately; and the officer receiving such execution shall endorse thereon the time of the receipt of the same. What justice to state in docket, &c.

§ 5. If any execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time by the justice issuing the same, by an endorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied, the endorsement of renewal shall express the sum due on the execution. Every such endorsement shall renew the execution in full force in all respects, for thirty days and no longer. An entry of such renewal shall be made in the docket of the justice. Execution not satisfied, how renewed.

§ 6. The officer, after taking goods and chattels into his custody by virtue of an execution, shall without delay give public notice by at least three advertisements, put up at three public places in the township, where the property is to be sold, of the time and place when and where the same shall be exposed to sale. Such notice Officer taking goods to give notice of sale.

shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

Manner of sale, &c. § 7. At the time so appointed, the officer shall expose the goods and chattels to sale at public vendue to the highest bidder. The officer shall in all cases return the execution, and have the money before the justice at the time of making such return.

Officer not to purchase. § 8. No officer shall directly or indirectly purchase any goods or chattels at any sale made by him upon execution, but every such sale shall be absolutely void.

Garnishees, how summoned. § 9. If there be no property found, or if the goods and chattels levied on are not sufficient to satisfy such execution, the officer shall, upon the demand of the plaintiff, summons in writing as garnishees, such persons as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and the like proceedings shall be had therein before the justice to final judgment and execution, as in suits instituted by attachment in a justice's court.

Officer to receive money. § 10. The officer who shall hold any execution, shall receive all money tendered to him in payment thereof, and shall endorse the same on the execution, and give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid, if demanded.

ARTICLE NINTH.

Of appeals and proceedings thereon in the district court.

Person may appeal. § 1. Any person aggrieved by any judgment rendered by a justice of the peace, except judgment of nonsuit, where the plaintiff fails to appear, may, in person or by his agent, make his appeal therefrom to the district court of the same county where the judgment was rendered.

Appeal to be made in six days. § 2. No appeal shall be allowed, in any case, unless the following requisites be complied with:

1st. The appeal must be made within six days after the judgment is rendered.

Recognizance. 2nd. The applicant, or some person for him, together with one or more securities, to be approved by the justice, must, within the time prescribed in the first clause of this section, enter into a recognizance before the justice, to the adverse party, in a sum sufficient to secure such judgment, together with the costs.

3rd. The fees of the justice shall be first paid by such applicant.

Form of recognizance. § 3. Such recognizance must be signed by the persons entering into the same, and attested by the justice, and shall be in the form following: "We and acknowledge ourselves to owe and be indebted unto in the sum of dollars, to be levied of our several goods and chattels, lands and tenements, to the use of or his assigns, if default be made in the conditions following to wit: Whereas the said has appealed from the judgment of justice of the peace, rendered the day of A. D. 18 in an action between plaintiff, and defendant: Now if the said shall prosecute his appeal with all due diligence to a judgment, in the district court, and if judg-

ment be rendered against him in such court, pay the amount of such judgment, including costs of appeal, with interest thereon; or if his appeal shall be dismissed or discontinued, that he will pay the judgment recovered against him before the justice, and the interest thereon, with cost of appeal, and abide the order the court may make therein, then this recognizance to be void, otherwise of force.

Taken and acknowledged before me. } C. D.
Justice." } E. F.

§ 4. Upon an appeal being made according to the foregoing provisions, the justice shall allow the same, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal; and if, in the meantime, execution shall have been issued, the justice shall give to the appellant a certificate that such appeal has been allowed. Justice to enter allowance of appeal.

§ 5. On such certificate being presented to the officer holding the execution he shall, forthwith, release the body and property of the defendant that may have been taken in execution; and if the appellant shall have been committed to jail, the jailer, upon the service of the like certificate on him, shall release the appellant from imprisonment. Appeal to release property and body.

§ 6. On or before the first day of the term of the district court next after the appeal shall have been allowed, the justice shall file in the office of the clerk of said court, a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit and filed with the justice. Transcript of entries to be filed.

§ 7. The issue before the justice shall be tried before the court above, without other or further new declaration or pleading, except in such cases as shall be otherwise directed by the court. Issue, how tried.

§ 8. The person or persons appealing shall cause an entry of the appeal to be made by the clerk of the court, on or before the second day of the term, unless otherwise ordered by the court; and the plaintiff in the court below shall be the plaintiff in the court above: *Provided*, That if the appellant shall fail or neglect to enter the appeal as aforesaid, the appellee may have the same entered, at any time during that or some succeeding term, and the judgment of the court below shall be entered against the appellant for the same, with interest, and twelve per centum damages, and the costs of both courts. When appeal to be entered, &c.

§ 9. Upon an appeal being made and allowed, the district court may, by rule and attachment, compel a return by the justice of his proceedings in the suit, and of the papers required to be by him returned. Justice compelled to make returns.

§ 10. If a justice fail to allow an appeal, in a cause where the same ought to have been allowed, the district court, on such fact satisfactorily appearing, may, by rule and attachment, compel the justice to allow the same, and to return his proceedings in the suit, together with all papers required to be returned by him. To allow an appeal.

§ 11. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may, by rule and attachment, compel him to amend the same. To amend return.

§ 12. No appeal allowed by a justice shall be dismissed on account of there being no recognizance, or that the recognizance given is defective, if the appellant will, before the motion to dismiss is determined. Appeal not to be dismissed, &c.

ed, enter, before the district court, into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred by reason of such default or omission.

Certain ap-
peals deter-
mined.

§ 13. All appeals allowed ten days before the first day of the term of the district court next after the appeal allowed, shall be determined at such term, unless continued for cause.

When judg-
ment of jus-
tice affirm-
ed, &c.

§ 14. In all cases of appeals from a justice's court, if the judgment of the justice be affirmed, or if on a trial anew in the district court the judgment be against the appellant, such judgment shall be rendered against him and his securities in the recognizance for the appeal.

Execution
when en-
forced
against secu-
rity.

§ 15. If upon an execution being issued upon such judgment, the principal shall not pay such execution, and the officer cannot find sufficient property of such principal to satisfy the same, such execution shall be enforced against the securities; and the officer shall specify on his return by whom the money was paid, and the time thereof.

Security
when to
have judg-
ment.

§ 16. After the return of an execution, satisfied in whole or in part, out of the property of the security, such security shall be entitled to a judgment on motion against the principal, for the amount so paid by him, together with interest, at twelve per cent per annum, from the time of payment; such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence upon the hearing of such motion of the facts therein stated.

ARTICLE TENTH.

Regulating the action of replevin.

Action of re-
plevin allow-
ed.

§ 1. Whenever any goods or chattels are wrongfully taken, or wrongfully detained, (the value of which shall not exceed fifty dollars) an action of replevin may be brought by the person having a right to the immediate possession, for the recovery thereof, and for the recovery of the damages sustained, by reason of the unjust caption or detention, as is hereinafter specified.

Commenced
by writ.

§ 2. Actions of replevin to be tried before a justice of the peace shall hereafter, in all cases, be commenced by writ, which shall be made returnable in the same manner as a summons, and shall be substantially in the following form:

Form of
writ.

Territory, county, ss.

To any sheriff or constable in said county:

Whereas A. B. complains that C. D. has taken, and does unjustly detain, (or "does unjustly detain," as the case may be, particularly describing the goods and chattels to be replevied;) therefore we command [you, that you cause the same goods and chattels to be replevied] without delay; and if the said A. B. shall give security as required by law, that you cause the said goods and chattels to be delivered to the said A. B.; and also that you summons the said C. D. to be and appear before me, one of the justices of the peace, in and for said county, on the day of A. D. 18 at o'clock, in the noon, at in the said county, to answer the complaint of

Given under my hand, this

day of

A. D. 18

E. F., Justice.

§ 3. No writ of replevin shall be issued, unless the plaintiff, his agent or attorney, shall file an affidavit with the justice, stating that said goods and chattels are wrongfully detained by the defendant, and that he has good right to the possession thereof, and that said goods and chattels were not taken by writ of replevin, attachment or in execution issued on any judgment against him, her or them, nor for the payment of any tax, fine or amercement, assessed against him, her or them; and every writ of replevin issued without such affidavit, shall be quashed at the cost of the plaintiff, and such plaintiff shall moreover be liable in damages to the party aggrieved.

Plaintiff to
file affidavit
with justice

§ 4. The writ of replevin shall command the officer to whom it is directed, to cause to be replevied to the plaintiff; the same goods and chattels named in such affidavit, and to summon the person who is charged with detaining them, to appear before the justice on the return day of said writ, to answer the plaintiff for the unjust detention of the same; and it shall be lawful for the officer to break open any house, stable or out-house, or other building in which such property is concealed, to replevy the same, having first demanded deliverance thereof at the house or other building or place, where the same are [is] concealed..

What writ
to command
officer, &c.

§ 5. Every officer, before he makes deliverance to the plaintiff, of any goods or chattels, taken by virtue of any writ of replevin, shall take of the plaintiff, his agent or attorney, in the name and for the benefit of the defendant, a bond with sufficient security, in double the value of the goods and chattels replevied, (which value shall be ascertained upon the oath of one or more credible, disinterested persons, whom the officer shall swear truly to assess the value thereof,) conditioned that the plaintiff or plaintiffs will prosecute the suit with effect, and without delay make return of the property, if the return thereof be adjudged, and pay all costs and damages which shall be awarded against the plaintiff, and keep harmless the officer in the execution of the writ, which bond the officer shall return with the writ; and if the plaintiff, his agent or attorney in the suit, shall neglect or refuse to cause such bond to be executed, as aforesaid, within twenty-four hours after having been notified by the officer of the taking of such goods and chattels, by virtue of such writ, the officer shall return such goods or chattels to the defendant; and if any officer shall deliver any property taken by writ of replevin to the plaintiff, without taking such security, or shall take insufficient security, he shall be liable in damages to the defendant.

Officer to
take bond of
plaintiff.

In case bond
not given.

§ 6. On the return of any writ of replevin, the suit shall be subject to the same usages, rules and regulations as in other cases; and if the plaintiff discontinue, become nonsuit, or [if] he should otherwise fail to prosecute his suit to final judgment, then, and in each of these cases, it shall be lawful, and it is hereby made the duty of the justice, when required by the defendant, to empanel and swear a jury to inquire and assess the value of the goods and chattels replevied, together with adequate damages for the caption and detention thereof; or if on trial of the issue joined, the jury shall find for the defendant, then the value of such goods and chattels, together with adequate damages, shall be assessed by such jury, and the justice shall thereupon render judgment in favor of the defendant for the value and damages so found by the jury, in either of the fore-

Proceedings
when plain-
tiff fails to
prosecute,
&c.

going cases ; but if the jury shall find that the defendant did unlawfully detain such goods and chattels, and that they were the property of the plaintiff, they shall assess adequate damages for such detention.

Suit not to be
instituted on
bond, un-
less, &c.

§ 7. The defendant shall not institute a suit on the bond given by the plaintiff, as provided in the foregoing section of this act, until he shall have sued out an execution, and it shall be ascertained by the return of such execution, that the plaintiff has not in the county, personal or real property whereon to levy and make the amount of such judgment, penalty and costs.

When prop-
erty at-
tached is
exempted.

§ 8. In all cases where property shall be taken in execution or by attachment, which shall be exempted therefrom by law, it shall be competent for the owner thereof, his agent or attorney, to make and file an affidavit, stating that such property is so exempted by law, and thereupon take out and prosecute a writ of replevin in the same manner as is provided by law in other cases.

What defen-
dant may
plead.

§ 9. The defendant may plead that he is not guilty of the charge alleged against him, and this plea shall put in issue, not only the right of the plaintiff to the possession of the property mentioned in the declaration, but also the wrongful taking and detention thereof.

Proceeding
when justice
has not juris-
diction.

§ 10. If on the return of any writ of replevin, it shall appear that the value of the goods and chattels replevied, shall have been assessed by the jury, to be of a greater value than the amount over which a justice has jurisdiction, then the justice shall within ten days thereafter file the affidavit, bond and writ, and all other papers relating to the case in the office of the clerk of the district court, and the said clerk shall immediately enter the same on his docket of causes, and the said suit shall be tried in the same manner as though the suit had been commenced in the district court.

ARTICLE ELEVENTH.

Of attachments.

Writ of at-
tachment
allowed.

§ 1. Creditors, whose demands amount to not more than fifty dollars, and not less than five dollars, may sue their debtors by attachment, before a justice of the peace, in the following cases :

In what
cases.

1st. When the debtor is not a resident of the territory.

2d. When the debtor has absconded or concealed himself, so that the ordinary process of law cannot be served upon him.

3d. When the debtor is about to abscond, or remove his property out of the territory, so as to hinder and delay his creditors.

4th. When there is good reason to believe that the debtor is about fraudulently to convey or dispose of his property or effects, so as to hinder or delay his creditors.

5th. Every action instituted by attachment, shall be brought before some justice of the county wherein the property of the defendant may be found.

Creditor to
file affidavit.

§ 2. Any such creditor wishing to sue his debtor by attachment, shall file with the justice, the affidavit of himself or some credible person, stating that the defendant is justly indebted to him, after allowing all just off-sets and credits, in a sum above five dollars, showing the amount in the affidavit, and also stating the belief of the person of the existence of one or more of the facts, which, under

the first section of this article, would entitle the plaintiff to sue by attachment; and thereupon the justice shall issue a writ of attachment against the property and effects of the defendant: *Provided always*, Before any such attachment shall issue, the justice shall take from such applicant, a bond to the defendant, with at least one sufficient surety in the sum of two hundred dollars, conditioned to pay the defendant all damages and costs he may sustain by reason thereof, if no judgment shall be recovered against such defendant.

Creditor to give bond.

§ 3. Writs of attachment shall be issued and returned in like time and manner as ordinary writs of summons, and when the defendant is summoned to answer, the like proceedings shall be had between him and the plaintiff, as on ordinary actions on contracts, and a general judgment may be rendered for or against the defendant.

Writs of attachment how issued & returned.

§ 4. The manner of serving writs of attachment shall be as follows:

How to be served.

1st. The writ shall be served upon the defendant as an ordinary summons.

2d. Garnishees shall be summoned by the officer declaring to them, that he does summons them to appear before the justice at the return day of the writ, to answer the interrogatories which may be put to them by the justice, and by reading the writ of attachment to them if required.

3d. When goods or chattels, money or evidence of debt, are to be attached, the officer shall seize the same, and keep them in his custody, if accessible, and if not accessible, he shall declare to the person in possession thereof, that he attaches the same in his hands, and summons such person as garnishee.

4th. When credits are to be attached, the officer shall declare to the debtor of the defendant, that he attaches in his hands all debts due from him to the defendant, or so much thereof as may be sufficient to satisfy the debt sued for, with interest and costs; and summons the debtor as garnishee.

§ 5. When property of the defendant, found in the hands or possession of any other person than the defendant shall be attached, such person may retain the possession thereof by giving bond and security to the satisfaction of the officer executing the writ, in double the value of the property so attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

When property attached, in hands of another.

§ 6. When property of the defendant shall be actually seized on attachment, the defendant or any other person for him, may obtain possession thereof, without dissolving the attachment, by giving the officer a bond with good and sufficient security, in double the amount of property, conditioned that the property shall be forthcoming, when and where the justice shall direct, to abide the judgment which may be rendered in the cause.

Possession obtained by giving bond.

§ 7. When property shall be seized on attachment, which is likely to perish, or depreciate in value before the probable end of the suit, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the officer in the same manner and on the same notice as goods are required to be sold on an execution, and the proceeds of such sale shall remain in the hands

Proceedings when property likely to perish.

of the officer, subject to be disposed of as the property would have been if seized upon in specie.

When defendant cannot be summoned, notice to be given.

§ 8. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order on his docket, requiring the plaintiff to give notice to the defendant, by publishing in a newspaper, if there be one printed in the county, or by three written or printed advertisements, set up at three of the most public places in the county, that a writ has been issued against him, and his property attached to satisfy the demand of the plaintiff, and that unless he appear before the justice, at some time and place to be mentioned in said notice, not less than twenty nor more than ninety days from the date thereof, judgment will be rendered against him, and his property sold to pay the debt.

Time and proof of notice.

§ 9. Such notice shall be set up or published at least fifteen days before the expiration of the time at which the party is required to appear, and the setting up thereof may be proved, either by the return of the officer upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case.

Judgment by default entered.

§ 10. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, judgment by default may be entered, which may be proceeded on to final judgment in like manner as in ordinary actions.

Attachments when to be dissolved.

§ 11. Attachments may be dissolved on motion made in behalf of the defendant, and at any time before final judgment, if the defendant shall appear and plead to the action, and give bond to the plaintiff with good and sufficient security to be approved by the justice, in double the amount of property, effects and credits attached, conditioned that such property, effects and credits shall be forthcoming, and abide the judgment which shall be rendered in the cause.

Proceedings when attachment dissolved.

§ 12. When any attachment shall be dissolved, all proceedings touching the property and effects attached, and the garnishees arrested or summoned, shall be vacated, and the suit proceed as if it had been commenced by a summons only.

When garnishee fails to appear.

§ 13. If any garnishee, being duly summoned, fail to appear at the proper time, or appearing, fail to make full and direct answers upon oath to the interrogatories, the plaintiff may take judgment against him by default, and the case may be proceeded on to final judgment, as in like cases between plaintiff and defendant, or at the option of the plaintiff, the justice shall attach the body of the garnishee, until he shall make full and direct answers to the interrogatories.

Judgment how rendered.

§ 14. No final judgment shall be rendered against the garnishee, until final judgment be had against the defendant.

Issues between plaintiff and garnishee how tried.

§ 15. All issues between the plaintiff and garnishee, shall be tried as ordinary issues between plaintiff and defendant, and costs may be adjudged for or against either party, as in ordinary cases; and if, upon the trial of any such issue, property or effects shall be found in the hands of the garnishee, the justice or jury shall assess the value thereof, and the judgment shall be for the amount in money.

Garnishee may discharge himself.

§ 16. Any garnishee, having property, money or effects of the defendant, may discharge himself by surrendering and paying the same, or so much thereof as shall be sufficient to cover the debt, in-

test and costs, to the officer, and taking his receipt therefor, at any time before the final judgment against him.

§ 17. When any plaintiff, at the time he applies for an attachment, shall, in addition to the affidavit required by the second section of this article, file the affidavit of himself or of some credible person, stating that any particular person in the county, other than the defendant, has in his hands any property, money, or effects of the defendant, or is indebted to the defendant, showing the kinds, quantity and value of the property, or the amount of the debt, (being above five dollars) and stating such circumstances as shall satisfy the justice that the plaintiff will be endangered by reason that such person is about to remove or secrete the property, or if a debtor of the defendant, that he is about to abscond or leave the territory, not to return, the justice shall issue his warrant commanding the officer to arrest him and bring such person forthwith before the justice.

When garnishee may be arrested.

§ 18. Such arrest shall be an attachment of the property and effects, money and credits of the defendant in his hands, or due from him, and he shall be considered as a garnishee summoned to answer.

Arrest, an attachment.

§ 19. Such garnishee, on being brought before the justice, may, at his option, enter into bonds with good security, to be approved by the justice, in favor of the plaintiff, and in such sum as the justice shall consider reasonable, conditioned that he will appear at the return of the attachment, and upon oath make (a) full and direct answers to the interrogatories which may be propounded to him, that he will abide the final judgment of the cause, and pay whatever may be adjudged against him.

Garnishee may give bonds.

§ 20. But if such garnishee refuse or fail to give such bond, the justice shall require him to answer the interrogatories, and shall proceed without delay to determine the matter in controversy between the plaintiff and that [the] garnishee.

If he refuse to give bond.

§ 21. If it shall appear, either by the answer of the garnishee, or by the finding of the justice or a jury, that the garnishee has in his hands property or effects of the defendant, the justice shall require him to give bond and security in favor of the plaintiff, in such sum as he shall direct, conditioned that the proper effects so confessed or found in his hands, and the debts so due from him, or the value thereof, shall abide the final judgment in the cause, and shall be produced and delivered when and where, and to whom the justice shall appoint.

Garnishee having property of defendant.

§ 22. In default of such bond, the justice shall commit the garnishee to the common prison until discharged by due course of law; nevertheless the garnishee may be discharged, by delivering and paying the property and money according to the provisions of the sixteenth section of this article.

When garnishee committed.

§ 23. If, at the hearing before the justice, it shall not be found that such garnishee has in his hands property or effects of the defendant, or is indebted to the defendant in the amount of five dollars, the garnishee shall be discharged, and judgment shall be rendered in his favor against the plaintiff for five dollars, and all costs consequent upon the warrant and execution shall issue therefor without delay.

When garnishee not indebted to amount of five dollars.

§ 24. When property is seized on attachment, the justice may allow to the officer having charge thereof, such compensation for his

Expenses when property attached.

trouble and expenses in keeping and maintaining the same, as shall be reasonable and just.

ARTICLE TWELFTH.

Certiorari.

Certiorari
allowed.

§ 1. If any person or persons shall conceive themselves injured by error in any process, proceedings, judgment or order given by any justice of the peace within this territory, it shall be lawful for such person or persons so aggrieved, to remove such judgment to the district court for the same county, at any time within twenty days from the rendition of such judgment.

Party apply-
ing for cer-
tiorari to
make affida-
vit.

§ 2. The party applying for such certiorari, his agent or attorney, shall present to a judge of the supreme court, or a supreme court commissioner, an affidavit, stating that, in his belief, there is reasonable cause for granting such certiorari for error in such judgment, (setting forth the ground of error alleged,) and that the application is made in good faith, and not for the purpose of delay: *And further,* Shall make and execute to the opposite party a bond, with one or more sufficient sureties, to be approved by such judge or commissioner, in double the amount of the judgment and cost rendered before the justice; conditioned, that he will prosecute the writ of certiorari to final judgment, and abide the order the court may make therein; and if such judge or supreme court commissioner shall be satisfied that any error affecting the merits of the controversy, has been committed by the justice or jury in the proceedings, verdict or judgment, he shall allow a writ of certiorari, by endorsing on the affidavit his allowance thereof.

To execute
bond.

Bond, &c. to
be filed.

§ 3. The affidavit and bond so given, shall be filed with the clerk of the district court for the county, who shall thereupon issue a writ of certiorari, commanding the justice or justices rendering such judgment, to make return as to all the facts contained in such affidavit.

Service of
certiorari.

§ 4. The certiorari so allowed, shall be served within ten days after its allowance upon the justice by whom the judgment was rendered.

Proceedings
when to
cease.

§ 5. Upon the service of a writ of certiorari upon the justice as aforesaid, all further proceedings at law in such case shall cease, and if execution shall have issued on such judgment, upon which certiorari is allowed, the justice shall immediately recall the same.

Justice to
have copy of
affidavit, &c.

§ 6. On the service of a writ of certiorari to reverse a judgment as aforesaid, it shall be the duty of the party serving the same, to deliver at the same time to the justice a copy of the affidavit on which the certiorari was procured; and the justice shall make a special return as to all the facts contained in (in) such affidavit, and annex a copy thereof to the writ; and shall file the same with the clerk of the district court, within five days after the service of the writ.

Return
made and
amended.

§ 7. The district court shall have power to compel such justice to make or amend such return by rule, attachment or mandamus, as the case may require.

Cause
brought to
argument.

§ 8. When such certiorari and return shall be so filed with the clerk, the cause may be brought on to argument at any time thereafter on the notice of either party.

Judgment
how given.

§ 9. The judge of such district court shall proceed and give judgment in the cause, as the right of the matter may appear, without

regarding technical omissions, imperfections or defects in the proceedings before the justice, which did not affect the merits, and may affirm or reverse the judgment in whole or in part, and may issue execution as upon other judgments rendered before them.

§ 10. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, the court shall award restitution of the amount so collected, with interest from the time of collection. Restitution awarded.

ARTICLE THIRTEENTH.

Proceedings in case of breach of the peace.

§ 1. No assaults, battery or affray, shall be indictable, but all such offences shall be prosecuted and determined in a summary manner before justices of the peace, as hereinafter provided. Assaults, &c. how determined.

§ 2. The foregoing section shall not extend to the trial or punishment of any case of riot or unlawful assembly, nor to any assault with an intent to maim, nor an assault with an intent to commit a rape, nor an assault with intent to commit robbery or any felony, nor an assault with intent to kill, nor shall it embrace the offence of shooting at or stabbing, but all such offences shall be punishable by indictment.

§ 3. Whenever a complaint shall be made to a justice of the peace, on the oath or affirmation of any person competent to testify against the accused, that an assault, battery, affray or other breach of the peace has been or is about to be committed, the justice shall forthwith issue a warrant for the arrest of the offender, which warrant shall be executed by the sheriff of the county or constable of the township, or by some competent person specially deputed by the justice for that purpose. Justice when to issue warrant.

§ 4. If any justice of the peace shall have any knowledge that any of the offences mentioned in the last section, are about to be committed, he shall issue his warrant and proceed as is directed in that section; and if any such offence is committed, threatened or attempted in his presence, he shall immediately arrest the offender, or cause it to be done; and for this purpose no warrant or process shall be necessary. But the justice may summons to his assistance any sheriff, coroner or constable, and all other persons there present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders, and all such as obstruct or prevent the justice, or any of his assistants, in the performance of their duty; and any person who shall, when summoned to aid in arresting and securing an offender, refuse to give such assistance, shall pay five dollars to the use of the county. He and may arrest without warrant.

§ 5. Upon good cause shown, the justice may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into recognizance, with sufficient security, conditioned that he will appear before the justice at the time and place appointed, then and there to answer the complaint alleged against him. Trial may be postponed.

§ 6. If the defendant shall fail or refuse to enter into recognizance, the justice shall commit him to the common jail of the county, there to remain until the day fixed for the trial of the complaint alleged against him. Justice may commit.

When recognizance broken.

§ 7. In case of the breach of any recognizance entered into as aforesaid, the same shall be certified and returned to the district court to be proceeded in according to law.

When justice has not final jurisdiction.

§ 8. If, in the progress of any trial before a justice of the peace, under the provisions of this article, it shall appear to the justice that he has not final jurisdiction in the case before him, and the accused ought to be put upon his trial for an offence cognizable before the district court, the justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases, cognizable before the district court.

Party, &c. to be summoned.

§ 9. In all cases arising under this article, it shall be the duty of the justice of the peace acting, to summons the injured party, and all others whose testimony may be deemed material, as witnesses at trial, and to enforce their attendance by attachment if necessary.

Trials to be by jury, unless, &c.

§ 10. All trials before a justice of the peace for any criminal offence within their jurisdiction, shall be by a jury of six competent men, unless the parties agree to leave the decision to the justice; and if the defendant be found guilty he shall pay a fine, which shall not be less than five dollars nor more than fifty dollars, according to the nature of the offence.

Prosecutor when to pay costs.

§ 11. When proceedings are commenced under the provisions of this article, on the information or complaint of the injured party, his name shall be entered by the justice in his docket as prosecutor; and if the defendant shall be discharged or acquitted, the prosecutor shall be adjudged to pay costs; in all other cases of discharge or acquittal, the costs shall be paid by the county.

Justice may commit defendant.

§ 12. In all cases of conviction under the provisions of this article, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the county.

Defendant may take benefit of insolvent laws.

§ 13. Any defendant who shall be committed or taken in execution on said judgment, may, at any time after ten days actual imprisonment in jail, take the benefit of the laws for the relief of insolvent debtors; and on taking the oath, and complying with the other requisitions of said law, may be discharged; and in that case the county shall pay the costs of the prosecution and imprisonment, and for the amount thereof shall be a privileged creditor of the defendant, entitled to be first satisfied out of his property and effects.

Appeal, how taken.

§ 14. The defendant may appeal to the district court, if he shall, on the day of the rendition of the judgment, file an affidavit, stating that he verily believes that injustice has been done by the verdict and judgment, and also enters into a recognizance with two sufficient securities, which recognizance shall be in the form, and with the same condition required in appeals from a justice of the peace in civil cases.

When appeal taken, witnesses to recognize.

§ 15. When an appeal is taken as aforesaid it shall be the duty of the justice to cause all material witnesses to enter into recognizance in the sum of fifty dollars each, conditioned for their appearance to testify in the cause at the term in which the appeal is returnable, and shall, on or before the first day of such term, file in the office of the clerk of the district court, a copy of the entries on his docket, with a copy of the process and affidavit of appeal, and the original recognizances of the appellant and witnesses duly certified.

§ 16. The clerk of the district court shall enter the cause on his docket, and if the appeal be regularly taken, the cause shall be heard on the merits at the return term, unless good cause be shown for a continuance, and the costs in both courts shall abide the event of the trial in the district court. Clerk to enter cause on docket.

§ 17. If the appeal be not taken and perfected within twenty-four hours from rendering judgment by the justice, the judgment shall be affirmed. Appeal, when to be perfected.

§ 18. If the judgment of the justice shall be affirmed, or upon any trial in the district court the defendant shall be convicted, and any fine assessed, judgment shall be rendered for such fine and costs in both courts against the defendant and his securities. Judgment how rendered if defendant convicted.

§ 19. If the judgment of the district [court] be not satisfied in thirty days after the rendition thereof, execution may issue against the party against whom judgment has been rendered, and his securities, which shall be made out of the property of the said party, if sufficient thereof be found, if not, then out of the property of the said securities. If judgment not satisfied in 30 days.

§ 20. In all cases not especially provided for by this article, the process and proceedings before the justice shall be governed by the laws regulating justices' courts in civil cases. Proceedings regulated.

§ 21. Any justice of the peace, sheriff, coroner, constable, or any other officer, who shall wilfully neglect or refuse to perform any duty enjoined on him by this article, shall be deemed guilty of a misdemeanor in office, and shall pay for the use of the county the sum of fifty dollars. Penalty for neglect of duty.

§ 22. Fines and penalties incurred under the provisions of this article, in cases not otherwise provided for, may be recovered before any justice by action of debt. Fines, how recovered.

§ 23. When a trial under the provisions of this article shall be continued by the justice, it shall not be necessary for the justice to summon any witness who may be present at the continuance, but said justice shall verbally notify such witnesses, as either party may require, to attend before him to testify in the cause on the day set for trial, which verbal notice shall be as valid as a summons. If trial adjourned, justice to notify witnesses.

ARTICLE FOURTEENTH.

Of the forms of writs or process.

§ 1. The following, or other equivalent forms shall be used by justices of the peace, in proceedings to be had under this act, to wit: What forms to be used.

A SUMMONS.

Wisconsin territory, county, ss.

To the sheriff or any constable of said county :

In the name of the United States, you are hereby commanded to summon if shall be found within your county, to be and appear before the undersigned, one of the justices of the peace in and for said county, on the day of 18 at o'clock in the noon, at in said county, to answer to in a plea of and have you then and there this writ.

Given under my hand, this day of 18

Justice of the Peace.

Form of summons.

Form of
warrant.

A WARRANT.

Wisconsin territory, county, ss.
To the sheriff or any constable of said county :
In the name of the United States, you are hereby commanded to
take the body of if to be found within your county, and
bring forthwith before the undersigned, one of the justices of the
peace in; and for said county, at to answer to in a plea
of and you are hereby commanded to give due notice thereof
to the said plaintiff. And have you then and there this writ.
Given under my hand this day of 18
Justice of the Peace.

Form of
subpoena.

SUBPOENA.

Wisconsin territory, county, ss.
In the name of the United States, you are hereby required to ap-
pear before the undersigned, one of the justices of the peace in, and
for said county, at on the day of at o'clock,
in the noon of said day, to give evidence in a certain cause, then
and there to be tried between plaintiff, and defend-
ant, on the part of the
Given under my hand this day of 18
Justice of the Peace.

Venire for a
jury.

A VENIRE FOR A JURY.

Wisconsin territory, county, ss.
To the sheriff or any constable of said county,
In the name of the United States, you are hereby commanded to
summon to be and appear before the undersigned, one of
the justices of the peace in and for said county, on the day of
at o'clock in the noon of said day, in the town of
to make a jury for the trial of an action of between
plaintiff, and defendant. And have you then and there this
writ.
Given under my hand this day of 18
Justice of the Peace.

Writ of at-
tachment.

A WRIT OF ATTACHMENT.

Wisconsin territory, county, ss.
To the sheriff or any constable of said county,
In the name of the United States, you are commanded to attach
the goods and chattels, moneys, effects, and credits of
or so much thereof as shall be sufficient to satisfy the sum of
with interest and costs of suit, in whose ever hands or possession the
same may be found in your county, and so provide that the goods
and chattels so attached, may be subject to further proceedings there-
on, as the law requires; and also to summon the said if to
be found, to be and appear before me at my office, in the town of
on the day of 18 to answer unto
plaintiff; and also, that you summon as garnishees all such persons
found in your county, as may be directed by the plaintiff or his agent
to appear before the said justice, at the time and place aforesaid, to

answer such interrogatories as the justice may propound, and have you then and there this writ.

Given under my hand this day of 18
Justice of the Peace.

AN EXECUTION.

Execution.

Territory of Wisconsin, county, ss.
To the sheriff or any constable of said county.

Whereas judgment against for the sum of
lawful money of the United States, and for costs of suit, was
recovered the day of before me, at the suit of

These are, therefore, in the name of the United States, to command you to levy distress on the goods and chattels of the said

(excepting such as the law exempts,) and make sale thereof, according to law in such case made and provided, to the amount of the said sums, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said
for said and costs. Hereof fail not under the penalty of the law.

Given under my hand the day of in the year
Justice of the Peace.

AN EXECUTION AGAINST GOODS OR THE BODY.

Territory of Wisconsin,
 county, ss.

Execution
against
goods or
body.

To the sheriff or any constable of said county: Whereas judgment against for the sum of lawful money of the United States, and for cost of suit, was recovered the day of before me, at the suit of

These are therefore, in the name of the United States, to command you to levy distress on the goods and chattels of the said (excepting such as the law exempts,) and make sale thereof according to law in such cases made and provided, to the amount of said sums, together with twenty-five cents for this execution, and the same to return to me within thirty days, to be rendered to the said
for said and costs, (and in cases where imprisonment is allowed by law, the following shall be added,) and for want of such goods and chattels whereon to levy, take the body of the said
and convey and deliver unto the keeper of the common prison of said county, who is hereby commanded to receive and keep the said
in safe custody in said prison, until the aforesaid sum and all legal expenses be paid and satisfied, or until he be discharged thence by due course of law. Hereof fail not, under the penalty of the law.

Given under my hand the day of in the year
Justice of the Peace.

FORM OF AN EXECUTION, WHERE SECURITY HAS BEEN GIVEN
FOR THE STAY OF EXECUTION ON THE JUDGMENT AGAINST
THE PRINCIPAL AND SECURITY.

Territory of Wisconsin, county, ss.

To the sheriff or any constable of said county: Whereas judgment [against] for the sum of lawful money of the United States, and costs of suit, was recovered the day of in the year

Where security given
for stay of
execution,
etc.

fore me, at the suit of And whereas on the day of in the year aforesaid, became security to pay the said judgment, with interest on the same, in months from the day of aforesaid, agreeable to law, as appears of record, in the payment of which the said have failed: These are therefore in the name of the United States, to command you to levy distress on the goods and chattels of the said, (excepting such as the laws exempt) and make sale thereof, according to the law in such cases made and provided, to the amount of the said sums, with interest thereon, together with twenty-five cents for this execution, and the same return to me within thirty days, to be rendered to the said for said and costs: (And where execution is allowed against the person, the following form,) And for want of said goods and chattels whereon to levy, take the body of the said and convey and deliver unto the keeper of the common prison of the said county, who is hereby commanded to receive and keep the said in safe custody in the said prison, until the aforesaid sums and legal expenses be paid and satisfied, or until be delivered thence by due course of law. Hereof fail not under the penalty of the law.

Given under my hand this day of 18

Justice of the Peace.

AN ACT concerning the admission of attorneys at law.

Qualification
necessary to
admission to
practice.

§ 1. Whenever any person shall apply to any of the district courts, or to the supreme court to be admitted to practice therein as an attorney, and shall show satisfactorily to such court, that he is a resident of the territory, and is of good moral character and possesses the requisite knowledge of the science and practice of law, the judge or judges thereof, may grant to such applicant a license to practise in the said courts respectively, in which he or they may preside. *Provided*, That nothing herein contained shall be so construed, as to preclude the judge or judges of either of said courts from granting special authority to attorneys or counsellors, residing without this territory, to practise in particular cases when any application may be made for that purpose.

Limitation.

AN ACT concerning the rights of persons who are accused of crimes and offences.

What offences
punished
by indictment.

§ 1. That no person shall be held to answer in any court for any alleged crime or offence, unless upon indictment by a grand jury, except in the following cases:

First. When a prosecution by information is expressly authorized by statute;

Secondly. In proceedings before a justice of the peace; and,

Thirdly. In proceedings before courts-martial.

Right of party
accused.

§ 2. On the trial of every indictment, the party accused shall be allowed to be heard by counsel and he may defend himself, and he shall have a right to produce witnesses and proofs in his favor, and to meet the witnesses who are produced against him, face to face.

Persons indicted,
how convicted.

§ 3. No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the

truth of the charge against him by his plea or demurrer, or by the verdict of a jury accepted and recorded by the court.

§ 4. No person shall be held to answer on a second indictment, for an offence of which he has been acquitted by the jury upon the facts and merits on a former trial; but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or in the substance of the indictment on which he was acquitted. Former acquittal bar to prosecution.

§ 5. If any person who is indicted for an offence shall on his trial, be acquitted upon the ground of a variance between the indictment and the proof, or upon any exception to the form or to the substance of the indictment, he may be arraigned again on a new indictment, and may be tried and convicted for the same offence, notwithstanding such former acquittal. When no defence.

§ 6. No person who is charged with any offence against the law, shall be punished for such offence, unless he shall have been duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person. When person not punished.

AN ACT to provide for the punishment of offences against the lives and persons of individuals.

§ 1. That every person who shall commit the crime of murder, shall suffer the punishment of death for the same. Murder.

§ 2. That every person who shall, by previous engagement or appointment, fight a duel within the jurisdiction of this territory, and in so doing shall inflict a wound upon any person whereof the person so injured shall die, shall be deemed guilty of murder. Murder in a duel.

§ 3. That every person who shall be the second of either party in such duel as is mentioned in the preceding section, and shall be present when such wound shall be inflicted, whereof death shall ensue, shall be deemed to be an accessory before the fact to the crime of murder. Second in a duel.

§ 4. That every person who shall fight a duel, or act as second or surgeon in the same, by previous arrangement, without this territory, shall be incapable of voting or holding any office, within this territory forever thereafter. Duel out of territory.

§ 5. That every person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any written or verbal message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the state prison, not more than ten years nor less than three years, and shall be incapable of holding any office of trust or profit under the laws of this territory. Engaging in duel, challenging, &c.

§ 6. That every person who shall accept such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel shall ensue or not, and every person who shall be present at the fighting of a duel with deadly weapons, as an aid, or second or surgeon, or who shall advise, encourage or promote such duel, shall be punished by imprisonment in the county jail, not more than two years nor less than one year. Accepting or carrying a challenge.

§ 7. That if any person shall post another, or in writing or print shall use any reproachful or contemptuous language, to or concern- Posting another, &c.

ing another, for not fighting a duel, or for not sending or accepting a challenge, he shall be punished by imprisonment in the county jail, not more than one year nor less than six months, or by fine, not exceeding five hundred dollars nor less than one hundred dollars.

Man-slaughter.

§ 8. That every person who shall commit the crime of manslaughter shall be punished by imprisonment in the state prison, not more than ten years nor less than one year.

Maiming or disfiguring.

§ 9. That if any person, with malicious intent, to maim or disfigure, shall cut out or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut or slit or mutilate the nose or lip, or cut off or disable a limb or member of any other person, every such offender, and every person privy to such intent, who shall be present aiding in the commission of such offence, shall be punished by imprisonment in the state prison, not more than five years nor less than one year, or by fine, not exceeding one thousand dollars nor less than two hundred dollars.

Assault with intent to murder, &c.

§ 10. That if any person shall assault another, with intent to murder, or to maim or disfigure his person, in any of the ways mentioned in the ninth section, he shall be punished by imprisonment in the county jail, not more than five years nor less than one year, or by fine, not exceeding one thousand dollars nor less one hundred dollars.

Attempt to murder by poison.

§ 11. That if any person shall attempt to commit the crime of murder, by poisoning, drowning or strangling another person, or by any means not constituting an assault with intent to murder, every such offender shall be punished by imprisonment in the state prison, not more than ten years nor less than one year.

Robbing, being armed, &c.

§ 12. That if any person shall assault another, and shall feloniously rob, steal and take from his person any money or other property which may be the subject of larceny, such robber being armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if being so armed he shall wound or strike the person robbed, he shall be punished by imprisonment in the state prison, not more than ten years nor less than three years.

Assault with intent to rob, being armed.

§ 13. That if any person, being armed with a dangerous weapon, shall assault another, with intent to rob or to murder, he shall be punished by imprisonment in the state prison, not more than five years nor less than one year.

Robbing, not being armed.

§ 14. That if any person shall, by force and violence, or by assault and putting in fear, feloniously rob, steal and take from the person of another, any money or other property which may be the subject of larceny, (such robber not being armed with a dangerous weapon,) he shall be punished by imprisonment in the state prison, not more than three years nor less than one year.

Assault to rob, not being armed.

§ 15. That if any person, not being armed with a dangerous weapon, shall assault another with force and violence, and with intent to rob or to steal, he shall be punished by imprisonment in the county jail, not more than two years nor less than six months.

Attempt to extort money, &c.

§ 16. That if any person, either verbally or by any written or printed communication, maliciously threaten to accuse another of any crime or offence, or shall, by any written or printed communication, maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any

act against his will, he shall be punished by imprisonment in the county jail, not more than one year nor less than six months, or by fine, not exceeding five hundred dollars nor less than one hundred dollars.

§ 17. That if any person shall ravish and carnally know any female of the age of ten years or more, by force and against her will, he shall be punished by imprisonment in the state prison, not more than thirty years nor less than ten years: but if the female shall be proven on the trial to have been, at the time of the offence, a common prostitute, he shall be imprisoned, not more than seven years nor less than one year.

§ 18. That if any person shall unlawfully and carnally know and abuse any female child under the age of ten years, he shall be punished by imprisonment in the state prison for life.

§ 19. That if any person shall assault any female, with intent to commit the crime of rape, he shall be punished by imprisonment in the state prison, not more than ten years nor less than one year.

§ 20. That every person who, without lawful authority, shall forcibly or secretly confine or imprison any other person within this territory, against his will, or shall forcibly carry or send such person out of this territory, or shall forcibly seize and confine, or shall inveigle or kidnap any other person, with intent either to cause such person to be secretly confined or imprisoned in this territory, against his will, or to cause such person to be sent out of this territory, against his will, or to be sold as a slave, or in any way held to service against his will; and every person who shall sell, or in any manner transfer, for any term, the service or labor of any negro, mulatto or other person of color, who shall have been unlawfully seized, taken, inveigled or kidnapped from this territory, to any state, place or country, shall be punished by imprisonment in the county jail, not more than two years nor less than one year, or by fine, not exceeding one thousand dollars nor less than five hundred dollars.

§ 21. That every offence mentioned in the next preceding section, may be tried either in the county in which the same may have been committed, or in any county in or to which the person so seized, taken, inveigled, kidnapped or sold, or whose services shall be so sold or transferred, shall have been taken, confined, held, carried or brought, and upon the trial of any such offence, the consent thereto of the person so taken, inveigled, kidnapped or confined, shall not be a defence unless it shall be made satisfactorily to appear to the jury, that such consent was not obtained by fraud, nor extorted by duress or by threats.

§ 22. That if any person shall mingle any poison with any food, drink or medicine, with intent to kill or injure any other person, or shall wilfully poison any spring, well or reservoir of water with such intent, he shall be punished by imprisonment in the state prison not more than ten years, nor less than one year.

§ 23. That if the owner of any mischievous animal, knowing its propensities, wilfully suffer it to go at large, or shall keep it without ordinary care, and such animal while so at large kill any human being who shall have taken all the precautions which the circumstances may permit to avoid such animal, such owner shall be punished by imprisonment in the county jail not more than six

Rape.

Rape and abuse of child.

Assault with intent to commit a rape.

Kidnapping or selling for slave.

Kidnapping, &c. where to be prosecuted.

Poisoning food, &c.

Mischievous animals not allowed to run at large.

months nor less than three months, or by fine not exceeding three hundred dollars nor less than one hundred dollars.

Certain assaults, how punished.

§ 24. That if any person shall assault another with intent to commit any burglary, robbery, rape, manslaughter, mayhem or any felony, the punishment of which assault is not herein prescribed, he shall be punished by imprisonment in the county jail not more than three years nor less than six months, or by fine not exceeding one thousand dollars nor less than one hundred dollars.

AN ACT to provide for the punishment of offences against the public health.

Penalty for selling unwholesome provisions, &c.

§ 1. That if any person shall knowingly sell any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding one hundred dollars.

For adulterating liquors, &c.

§ 2. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt liquor, or other liquor intended for drinking, with any substance injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars, and the articles so adulterated shall be forfeited and destroyed.

For adulterating drugs, &c.

§ 3. If any person shall fraudulently adulterate for the purpose of sale, any drug or medicine in such a manner as to render the same injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars, and such adulterated drugs and medicines shall be forfeited and destroyed.

For inoculating with small pox, &c.

§ 4. If any person shall inoculate himself or any other person, or shall suffer himself to be inoculated with the small pox, within this territory, with intent to cause the prevalence or spread of this infectious disease, he shall be punished by imprisonment in the state prison not more than three years nor less than one year.

AN ACT to provide for the punishment of offences against private property.

Burning dwelling-house at night.

§ 1. That every person who shall wilfully and maliciously burn in the night time the dwelling-house of another, or shall in the night time wilfully and maliciously set fire to any other building owned by himself or another, by the burning whereof such dwelling-house shall be burnt in the night time, shall suffer the punishment of death; but if the defendant shall prove on the trial, and the jury shall find that at the time of committing the offence there was no person lawfully in the dwelling-house so burnt, the punishment instead of death shall be imprisonment in the state prison not more than twenty years, nor less than ten years.

Id. in day time.

§ 2. That every person who shall wilfully and maliciously burn in the day time the dwelling-house of another, or any building adjoining such dwelling-house, or shall wilfully and maliciously set fire to any building owned by himself or another, by the burning whereof such dwelling-house shall be burnt in the day time, or shall in the

day time wilfully and maliciously set fire to any building owned by himself or another, by the burning whereof such dwelling-house shall be burnt in the night time, shall be punished by imprisonment in the state prison not more than fifteen years, nor less than five years.

§ 3. That every person who shall wilfully and maliciously burn in the night time any meeting-house, church, court-house, town-house, college, academy, jail or other building erected for public uses, or any ship, steam-boat or other vessel, or any banking-house, warehouse, store, manufactory or mill of another, or any barn, stable, shop or office of another, within the curtilage of any dwelling-house or any other building, by the burning whereof any building mentioned in this section shall be burnt in the night time, shall be punished by imprisonment in the state prison not more than fifteen years, nor less than five years.

Burning
church,
court-house,
&c. at night.

§ 4. That every person who shall wilfully and maliciously burn in the day time any building mentioned in the next preceding section, the punishment for which, if burnt in the night time, would be imprisonment in the state prison not more than fifteen years, nor less than five years, shall be punished by imprisonment in the state prison not more than eight years, nor less than four years.

Ib. day time.

§ 5. That every person who shall wilfully and maliciously burn, either in the night time or day time, any banking-house, ware-house, store, manufactory, mill, barn, stable, shop, office, out-house or other building whatsoever, of another, other than is mentioned in the third section, or any bridge, lock, dam or flume, shall be punished by imprisonment in the state prison not more than eight years, nor less than four years.

Ib. day or
night, cer-
tain build-
ings.

§ 6. That every person who shall wilfully and maliciously burn any pile or parcel of boards, timber or other lumber, or any stack of hay, grain, or other vegetable product, or any vegetable product severed from the soil but not stacked, or any standing grain, grass, or other standing product of the soil, shall be punished by imprisonment in the county jail not more than two years, nor less than six months.

Burning
boards, tim-
ber, &c.

§ 7. That the preceding sections shall severally extend to a married woman who may commit either of the offences therein described, though the property burnt or set fire to may belong partly or wholly to her husband.

Married wo-
men liable.

§ 8. That every person who shall wilfully burn any building or any goods, wares, merchandise or other chattels, which shall be at the time insured against loss or damage by fire, with intent to injure the insurer, whether such person be the owner of the property burnt or not, shall be punished by imprisonment in the state prison not more than ten years, nor less than three years.

Burning
property to
injure insu-
rers.

§ 9. That every person who shall break and enter any dwelling-house in the night time, with intent to commit the crime of murder, rape, robbery, larceny or any other felony, or after having entered with such intent shall break any such dwelling-house in the night time, any person being then lawfully therein, and the offender being armed with a dangerous weapon at the time of such breaking or entering, or so arming himself in such house, or making an actual assault on any person lawfully therein, shall be punished by impri-

Burglary,
being armed
or making
assault.

sonment in the state prison not more than twelve years, nor less than four years.

Burglary,
not being
armed nor
assaulting.

§ 10. That every person who shall break and enter any dwelling-house in the night time with such intent as is mentioned in the next preceding section, or who having entered with such intent, shall break such dwelling-house in the night time, the offender not being armed nor arming himself in such house with a dangerous weapon, nor making an assault upon any person then being lawfully therein, shall be punished by imprisonment in the state prison not more than five years, nor less than two years.

Breaking in
office, &c.
at night.

§ 11. That every person who shall break and enter in the night time any office, shop or ware-house not adjoining to or occupied with a dwelling-house, or any ship, steam-boat or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny or any other felony, he shall be punished by imprisonment in the state prison not more than three years, nor less than one year.

Entering
house, &c. at
night with-
out breaking
&c.

§ 12. That every person who shall enter in the night time without breaking, or shall break and enter in the day time, any dwelling-house or any out-house thereto adjoining and occupied therewith, or any office, shop or ware-house, or any ship, steam-boat or vessel, within the body of any county, with intent to commit the crime of murder, rape or robbery, larceny or other felony, shall be punished by imprisonment in the county jail not more than two years, nor less than six months.

Larceny in
dwelling-
house, &c.

§ 13. That every person who shall commit the crime of larceny in any dwelling-house, office, shop, bank or ware-house, ship, steam-boat or vessel, or shall break and enter in the night time or day time any meeting-house, church, court-house, town-house, college, academy or other building erected for public use, and steal therein, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year nor less than three months, or by fine not exceeding five hundred dollars.

Stealing
from a per-
son.

§ 14. That every person who shall commit the offence of larceny by stealing from the person of another, shall be punished by imprisonment in the state prison not more than four years nor less than two years, or by imprisonment in the county jail not more than two years nor less than three months, or by fine not exceeding five hundred dollars.

Simple lar-
ceny ex-
ceeding \$100
in value.

§ 15. That every person who shall commit the crime of larceny by stealing of the property of another, any money, goods or chattels, or any bank note, bond, promissory note, bill of exchange or other bill, order or certificate, or any book of accounts for or concerning money or goods due or to become due, or to be delivered, or any deed or writing containing a conveyance of land or any other valuable contract in force, or any receipt, release or defeasance, or any writ, process or public record, if the property stolen shall exceed the value of one hundred dollars, shall be punished by imprisonment in the state prison not more than three years nor less than one year; and if the property stolen shall not exceed the value of one hundred dollars, he shall be punished by imprisonment in the county jail not more than

1b. less than
\$100.

two years nor less than three months, or by fine not exceeding three hundred dollars.

§ 16. That every justice of the peace shall have jurisdiction concurrent with the district court of all the larcenies mentioned in the fifteenth section of this act, when the money or other property stolen shall not be alleged to exceed the value of twenty dollars, and of all other larcenies whatever, when the money or other property stolen shall not be alleged to exceed the value of ten dollars; in all which cases the punishment shall be by fine not exceeding fifty dollars, or by imprisonment in the county jail for the term of three months; saving to every person who shall be convicted before the justice the right to appeal as in other cases.

Jurisdiction
of justice in
larcenies.

§ 17. That every person who shall buy, receive or aid in the concealment of stolen money, goods or property, knowing the same to have been stolen, shall be punished by imprisonment in the state prison not more than four years nor less than one year, or by imprisonment in the county jail not more than two years nor less than three months, or by fine not exceeding five hundred dollars.

Buying, &c.
stolen goods.

§ 18. That every justice of the peace shall have jurisdiction concurrent with the district court, as before provided, of all offences of buying, receiving or aiding in the concealment of stolen goods or other property, in all cases in which they would have had jurisdiction of a larceny of the same goods or other property; and the punishment of buying, receiving or aiding in the concealment of such goods or other property, shall be the same as in the case of a larceny of the same goods or other property, with the same right of appeal on conviction.

Jurisdiction
of justice
over receivers,
&c.

§ 19. That in any prosecution for the offence of buying, receiving or aiding in the concealment of stolen money or other property known to have been stolen, it shall not be necessary to aver nor on the trial thereof to prove that the person who stole such property has been convicted.

Receivers
may be tried
before thief
convicted.

§ 20. That the officer who shall arrest any person charged as principal or accessory in any robbery or larceny, shall secure the property alleged to be stolen and shall be answerable for the same, and he shall annex a schedule thereof to his return of the warrant, and upon conviction of the offender the stolen property shall be restored to the owner.

Officer ar-
resting to se-
cure
goods.

§ 21. That upon any conviction of burglary, robbery or larceny, the court may order a meet recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer.

Prosecutor
and officer
how paid.

§ 22. That if any cashier or other officer, or any agent, clerk or servant of any incorporated bank, shall embezzle or fraudulently convert to his own use, or shall fraudulently take or secrete, with intent to convert to his own use, any bullion, money, note, bill, obligation or security, or any other effects or property belonging to and in possession of such bank, or belonging to any person and deposited therein, he shall be deemed to have committed the crime of larceny in such bank.

Embezzle-
ment by offi-
cers of
banks.

§ 23. That if any officer, agent, clerk or servant of any incorporated company, or if any clerk, agent or servant of any private per-

th. by agent,
clerk, &c.

son or of any co-partnership, except apprentices and other persons under the age of sixteen years, shall embezzle or fraudulently convert to his own use, or shall take or secrete with intent to embezzle and convert to his own use, without consent of his employer or master, any money or property of another, which shall have come to his possession or shall be under his care by virtue of such employment, he shall be deemed by so doing to have committed the crime of larceny.

lb. by carrier and others.

§ 24. That if any carrier or other person to whom any money, goods or other property which may be the subject of larceny, shall have been delivered to be carried for hire, or if any other person who shall be entrusted with such property, shall embezzle or fraudulently convert to his own use, or shall secrete with intent to embezzle or fraudulently convert to his own use any such money, goods or property, either in the mass as the same were delivered, or otherwise, and before delivery of such money, goods or property, at the places where or to the persons to whom they were to be delivered, he shall be deemed to have committed the crime of larceny.

Falsely personating another.

§ 25. That every person who shall falsely personate or represent another, and in such assumed character shall receive any money or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed by so doing to have committed the crime of larceny.

Obtaining property by false pretences.

§ 26. That if any person shall designedly, by any false pretence or by any priory [privity] or false token, and with intent to defraud, obtain from any other person any money or goods, wares, merchandise or other property, or shall obtain with such intent the signature of any person to any written instrument the false making whereof would be punishable as forgery, he shall be punished by imprisonment in the state prison not more than five years nor less than one year, or by fine not exceeding five hundred dollars nor less than fifty dollars.

Gross frauds how punished.

§ 27. That every person who shall be convicted of any gross fraud or cheat at common law, shall be punished by imprisonment in the county jail not more than four years nor less than one year, or by fine not exceeding one thousand dollars nor less than fifty dollars.

Casting away, burning, &c. ship, &c.

§ 28. That if any person shall wilfully cast away, burn, sink or otherwise destroy any ship, steam-boat or vessel within the body of any county, with intent to injure or defraud any owner of such vessel, steam-boat or ship, or the owner of any property laden on board the same, or any insurer of such vessel or property, or of any part thereof, he shall be punished by imprisonment in the state prison not more than ten years nor less than three years.

Fitting out vessels with intent to destroy.

§ 29. That if any person shall lade, equip or fit out, or assist in lading, equipping and fitting out any steam-boat, ship or vessel, with the intent that the same shall be wilfully cast away, burnt, sunk or otherwise destroyed, to injure or defraud any owner or insurer of such vessel, or of any property laden on board the same, he shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by fine not exceeding five thousand dollars nor less than one hundred dollars.

Making false invoices of cargo.

§ 30. That if the owner of any ship, steam-boat or vessel, or any property laden or pretended to be laden on board the same, or if any

other person concerned in the lading or fitting out of any such ship, steam-boat or vessel, shall make out or exhibit, or cause to be made out or exhibited any false or fraudulent invoice, bill of lading, bill of parcels or other false estimates of any goods or property laden or pretended to be laden on board such vessel, with intent to injure or defraud any insurer of such vessel or property, or of any part thereof, he shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by fine not more than five hundred dollars nor less than one hundred dollars.

§ 31. That if any master or other officer or mariner of any ship steam-boat or vessel, shall make or cause to be made, or shall swear, to any false affidavit or protest, or if any owner or other person concerned in such vessel, or in the goods or property laden on board such vessel, shall procure any such false affidavit or protest to be made, or shall exhibit the same with intent to injure or deceive or defraud any insurer of such ship, steam-boat or vessel, or of the goods or property laden on board the same, or any other person, he shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by fine not exceeding one thousand dollars nor less than one hundred dollars.

Making or procuring false protest, &c.

§ 32. That every person who shall wilfully and maliciously kill, maim or disfigure any horses, cattle or other beasts of another person, or shall wilfully and maliciously administer poison to any such beasts, or expose any poisonous substance with intent that the same may be taken or swallowed by them, or shall wilfully and maliciously destroy or injure the personal property of another, in any manner or by any means not particularly mentioned or described in this act, shall be punished by imprisonment in the county jail not more than two years nor less than three months, or by fine not exceeding five hundred dollars nor less than fifty dollars.

Maliciously killing, maiming, &c. cattle.

§ 33. That if any person shall falsely and fraudulently represent that he is the owner of any parcel or tract of land to which he has no title, and shall execute any deed of the same with intent to defraud any person whatever, he shall be punished by imprisonment in the county jail not more than two years nor less than six months.

Selling lands without title.

§ 34. That every person who shall wilfully and maliciously break down, injure, remove or destroy any dam, reservoir, canal or trench, or any gate, flume, flash boards or other appurtenances thereof, or of the wheels, mill-gear or machinery of any mill, or shall wilfully or wantonly, and without color of right, draw off the water contained in any mill-pond, reservoir, canal or trench, shall be punished by imprisonment in the county jail not more than two years nor less than six months, or by fine not exceeding four hundred dollars nor less than fifty dollars.

Malicious injury to dams, &c.

§ 35. That every person who shall wilfully or maliciously break down, injure, remove or destroy any public or toll bridge, or rail-road, or any turnpike gate, or any lock, culvert or embankment of any canal, or shall wilfully and maliciously make any aperture or breach in any such embankment, with intent to destroy or injure the same, shall be punished by imprisonment in the county jail not more than three years nor less than six months, or by fine not exceeding six hundred dollars nor less than fifty dollars.

Th. to bridges turnpike gates, &c.

Ib. to fruit
and orna-
mental trees
fences, &c.

§ 36. That every person who shall wilfully and maliciously, or wantonly and without cause, cut down and destroy, or by girdling, lopping or otherwise, shall injure any fruit tree or any other trees, not his own, standing or growing, for shade, ornament or other useful purposes, or shall maliciously or wantonly break the glass or any part of it in any building not his own, or shall maliciously break down any fence belonging to or enclosing land not his own, or shall maliciously throw down or open any bars, gate or fence and leave the same down or open, or shall maliciously and injuriously sever from the freehold of another any produce thereof, or any thing attached thereto, shall be punished by imprisonment in the county jail not more than one year nor less than three months, or by fine not exceeding two hundred dollars.

Ib. monu-
ments, mile-
stones, &c.

§ 37. That every person who shall wilfully and maliciously break down, injure, remove or destroy any monument erected for the purpose of designating the boundaries of any town or of any tract or lot of land, or any tree marked for that purpose, or shall so break down, injure, remove or destroy any mile stone, mile board or guide board, erected upon any highway or other public way, turnpike or rail-road, or shall wilfully or maliciously deface or alter the inscription on any such stone or board, or shall wilfully or maliciously mar or deface any building or any sign board, or shall extinguish any lamp, or break, destroy or remove any lamp or lamp post, or any railing or posts, erected on any bridge, side-walk, street, highway, court or passage, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than six months.

Trespassing
in gardens.

§ 38. That every person who shall wilfully commit any trespass by entering upon the garden, orchard or other improved land of another, without permission of the owner thereof, and with intent to cut, take, carry away, destroy or injure the trees, grain, grass, hay, fruit or vegetables there growing or being, shall be punished by fine not exceeding fifteen dollars nor less than three dollars.

Jurisdiction
of justices,
&c.

§ 39. That every justice of the peace shall have concurrent jurisdiction in his own county with the district court, of all offences mentioned in the three next preceding sections of this act, when the value of the trees, fruit, grain or other property injured, destroyed, taken or carried away, or the injury occasioned by the trespass shall not be alleged to exceed the sum of fifty dollars, and in any such case the punishment shall be by fine, not exceeding fifteen nor less than three dollars.

Firing
prairie or
timber land.

§ 40. That if any person shall wilfully or negligently set fire to and burn any prairie or timbered land, by which the property of another may be destroyed or injured, such person upon conviction shall be fined in any sum not exceeding five hundred nor less than ten dollars.

AN ACT to provide for the punishment of forgery and counterfeiting.

Forgery of
records, con-
tracts, &c.

§ 1. That every person who shall falsely make, alter, forge or counterfeit any public record, or any certificate, return or attestation of any clerk of a court, public register, notary public, justice of the peace or any other public officer, in relation to any matter wherein such certificate, return or attestation may be received as legal proof,

or any charter, deed, will, testament, bond or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note, or any order, acquittance or discharge for money or other property, or any acceptance of a bill of exchange, endorsement or assignment of a bill of exchange or promissory note, or any accountable receipt for money, goods or other property, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by imprisonment in the county jail not more than two years nor less than one year.

§ 2. That every person who shall utter and publish as true any false, forged or altered record, deed, instrument or other writing mentioned in the next preceding section, knowing the same to be false, forged or altered with intent to injure or defraud as aforesaid, shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by imprisonment in the county jail not more than two years nor less than one year.

Uttering
forged re-
cords or con-
tracts.

§ 3. That every person who shall falsely make, alter, forge or counterfeit any note, certificate or other bill of credit, issued by any commissioner or other officer authorized to issue the same for any debt of this territory, with intent to injure or defraud as aforesaid, shall be punished by imprisonment in the state prison not more than seven years nor less than three years.

Forging
notes, &c.
issued by
territory.

§ 4. That every person who shall make, alter, forge or counterfeit any bank bill, promissory note, draft or other evidence of debt, issued by any corporation or company duly authorized for that purpose by the laws of the United States, of any state of the United States or of this territory, or of any other territory of the United States, or of any other State, government or country, with intent to injure or defraud, shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by imprisonment in the county jail not more than two years nor less than one year.

Forging
bank notes.

§ 5. That every person who shall have in his possession any forged, counterfeit or altered bank bill, promissory note, draft or other evidence of debt issued or purporting to have been issued as is mentioned in the next preceding section, with intent to utter the same as true or false, knowing the same to be so forged, counterfeited or altered as aforesaid, shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by imprisonment in the county jail not more than two years nor less than one year.

Having
counterfeit
bills with in-
tent to pass.

§ 6. That every person who shall utter or pass, or tender in payment as true, any false, altered, forged or counterfeit note, certificate or bill of credit for any debt of this territory, or bank bill, promissory note, draft or other evidence of debt issued or purporting to have been issued as is mentioned in the fourth section of this act, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud, shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by imprisonment in the county jail not more than two years nor less than one year.

Passing
counterfeit
bills, &c.

§ 7. That every person who shall engrave, make or mend, or begin to engrave, make or mend any plate, block, press or other tool, instrument or implement, or shall make or provide any paper or other materials adapted and designed for the forging or making any false

Making or
having tools,
&c. for
counterfeiting
with intent,
&c.

and counterfeit note, certificate or other bill of credit in the similitude of the notes, certificates or bills of credit, issued by lawful authority for any debt of this territory, or any false or counterfeit note or bill in the similitude of the notes or bills issued by any bank or banking company established in this territory, or within the United States, or any territory thereof, or within any other government or country, and every person who shall have in his possession any such plate or block engraved in any part, or any press or other tool, instrument or implement, paper or other material, adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used in forging or making any such false and forged certificates, bills or notes, shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by imprisonment in the county jail not more than two years nor less than one year.

Testimony
of president
of banks,
when dis-
pensed with.

§ 8. That in all prosecutions for forging or counterfeiting any notes or bills of the banks before mentioned, or for uttering, publishing or tendering in payment as true, any forged or counterfeit bank bills or notes, or for being possessed thereof with intent to utter and pass them as true, the testimony of the president and cashier of such banks may be dispensed with, if their place of residence shall be out of this territory, or more than forty miles from the place of trial, and the testimony of any person acquainted with the signature of the president or cashier of such banks, or who has knowledge of the difference in the appearance of the true and counterfeit bills or notes thereof may be admitted, to prove that any such bills or notes are counterfeit.

Sworn certi-
ficate of cer-
tain officers
made evi-
dence.

§ 9. That in all prosecutions for forging or counterfeiting any note, certificate, bill of credit or other security issued on behalf of the United States or on behalf of any state or territory, or for uttering, publishing or tendering in payment as true any such forged or counterfeit note, certificate, bill of credit or security, or for being possessed thereof with intent to utter and pass the same as true, the certificate under oath of the secretary of the treasury, or of the treasurer of the United States, or of the secretary or treasurer of any state or territory on whose behalf such note, certificate, bill of credit or security purports to have been issued, shall be admitted as evidence for the purpose of proving the same to be forged or counterfeit.

Fraudulent-
ly connect-
ing parts of
instruments.

§ 10. That if any person shall fraudulently connect together different parts of several bank notes or other genuine instruments, in such manner as to produce an additional note or instrument with intent to pass all of them as genuine, the same shall be deemed a forgery in like manner as if each of them had been falsely made or forged.

Affixing fic-
titious sig-
natures.

§ 11. That if any fictitious or pretended signature, purporting to be the signature of an officer or agent of any corporation shall be fraudulently affixed to any instrument or writing, purporting to be a note, draft or other evidence of debt issued by such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, nor such corporation ever have existed.

Intent to de-
fraud; state-
ment and
proof.

§ 12. That in any case where the intent to defraud is necessary to constitute the offence of forgery or any other offence that may be prosecuted, it shall be sufficient to allege in the indictment, an intent

to defraud, without naming therein the particular person or body corporate, intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, territory, county, city, town or parish, or any body corporate, or any public officer in his official capacity, or any co-partnership or member thereof, or any particular person.

§ 13. That every person who shall counterfeit any gold or silver coin, current by law or usage within this territory, and every person who shall have in his possession at the same time ten or more pieces of false money or coin, counterfeited in the similitude of any gold or silver coin, current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by imprisonment in the county jail not more than two years nor less than one year.

Counterfeiting coin, or having ten pieces, &c.

§ 14. That every person who shall have in his possession any number of pieces less than ten of the counterfeit coin mentioned in the next preceding section, knowing the same to be counterfeit, with intent to utter or pass the same as true, and any person who shall utter, pass or tender in payment as true, any such counterfeit coin, knowing the same to be false and counterfeit, with intent to injure or defraud, shall be punished by imprisonment in the county jail not more than three years nor less than one year.

Having less than ten pieces, &c.

§ 15. That every person who shall cast, stamp, engrave, make or mend, or shall knowingly have in his possession any mould, pattern, die, puncheon, engine, press or other tool or instrument, adapted and designed for coining or making any counterfeit coin in the similitude of any gold or silver coin, current by law or usage in this territory, with intent to use the same, or cause or permit the same to be used or employed in coining or making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the state prison not more than five years nor less than two years.

Making, &c. tools for coining, &c.

§ 16. That any person who may be convicted of a second offence shall be punished by imprisonment not exceeding twice the term mentioned in the section under which he may be indicted and tried.

Punishment on conviction of second offence.

AN ACT to provide for the punishment of offences against public justice.

§ 1. That every person being lawfully required to depose the truth in any proceedings in a course of justice, who shall commit perjury, shall be punished if such perjury was committed on the trial of an indictment for a capital crime, by imprisonment in the state prison not more than fifteen years nor less than three years; and if committed in any other case, by imprisonment in the state prison not more than five years nor less than two years.

Perjury, punishment of.

§ 2. If any person of whom an oath shall be required by law, shall wilfully swear falsely in regard to any matter or thing respecting which such oath is required, such person shall be deemed guilty of perjury.

What deemed perjury.

§ 3. Every person who shall be guilty of subornation of perjury by procuring another person to commit the crime of perjury as afore-

Subornation of perjury.

said, shall be punished in the same manner as for the crime of perjury.

Incoming to
commit per-
jury.]

§ 4. If any person shall endeavor to procure or incite any other person to commit the crime of perjury, though no perjury be committed, he shall be punished by imprisonment in the county jail not more than three years nor less than one year.

Disqualifica-
tion on con-
viction.

§ 5. The oath of any person convicted of perjury, subornation of perjury, or an endeavor to incite or procure any other person to commit such perjury, shall not be received in any proceedings in a course of justice except in an affidavit in his own cause or as a poor debtor, unless the judgment given against such person shall be reversed, or unless he shall be pardoned.

Proceedings
when perju-
ry suspect-
ed by court.

§ 6. Whenever it shall appear to any court of record that any witness or party who has been legally sworn and examined, or has made an affidavit in any proceedings in a course of justice, has testified in such a manner as to induce a reasonable presumption that he has been guilty of perjury therein, the court may take a recognizance with sureties for his appearing to answer to an indictment for perjury, and thereupon, the witness to establish such perjury may be bound over to the proper court, and notice of the proceedings shall forthwith be given to the district attorney.

Copies of
papers, &c.
may be ta-
ken.

§ 7. If in any proceeding in a court of justice in which perjury shall be reasonably presumed as aforesaid, any papers, books or documents shall have been produced which shall be deemed necessary to be used in any prosecution for such perjury, the court may order a certified copy of such books, papers or documents to be taken to be used in such prosecution, and such certified copy shall be used in such prosecution in the same manner as the original might have been.

Giving or of-
fering bribes
to officers.

§ 8. Every person who shall corruptly give, offer or promise to any executive, judicial or legislative officer after his election or appointment, and either before or after he shall have been qualified, or shall have taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment in any matter, question, course or proceeding which may then be pending, or may by law, come or be brought before him in his official capacity, shall be punished by imprisonment in the county jail not more than three years nor less than one year, or by fine not exceeding five hundred dollars nor less than one hundred dollars.

Accepting
bribes by
officers.

§ 9. Every executive, legislative or judicial officer who shall corruptly accept any gift or gratuity, or any promise to make any gift, or do any act beneficial to such officer, under an agreement, or with an understanding that his vote, opinion or judgment shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is or may be by law brought before him in his official capacity, or that in such capacity he shall make any particular nomination or appointment, shall be punished by imprisonment in the county jail not more than four years nor less than two years, or by fine not exceeding six hundred dollars nor less than two hundred dollars.

Corrupting
jurors, &c.

§ 10. Every person who shall corrupt or attempt to corrupt any master in chancery, auditor, juror, arbitrator, umpire or referee, by giving, offering or promising any gift or gratuity whatever, with in-

tent to bias his opinion or influence the decision of such master in chancery, auditor, juror, arbitrator, umpire or referee, in relation to any cause or matter which may be pending in the court or before an inquest, or for the decision of which such arbitrator, umpire or referee shall have been appointed, shall be punished by imprisonment in the county jail, not more than three years nor less than one year, or by fine not exceeding five hundred dollars nor less than one hundred dollars.

§ 11. If any person summoned as a juror, chosen or appointed as an arbitrator, umpire or referee, or if any master in chancery or auditor shall corruptly take any thing to give his verdict, award or report, or shall corruptly receive any gift or gratuity whatever, from a party to any suit, cause or proceeding, for the trial or decision of which such juror shall have been summoned, or for the hearing or determining of which such master in chancery, auditor, arbitrator, umpire or referee shall have been chosen or appointed, he shall be punished by imprisonment in the county jail, not more than three years nor less than one year, or by fine not exceeding six hundred dollars nor less than two hundred dollars.

Accepting
bribes by ju-
rors, &c.

§ 12. Every person who shall convey into any jail, house of correction, house of reformation or other like case, [place] of confinement, any disguise, or any instrument, tool, weapon or other thing, adapted or useful to aid any prisoner to make his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or shall by any means whatever, aid or assist any such prisoner in his endeavor to escape therefrom, whether such escape be attempted or effected or not, and every person who forcibly rescues any prisoner held in custody upon any conviction or charge of an offence, shall be punished by imprisonment in the state prison not more than four years nor less than two years; or if the person whose escape or rescue was effected or intended, was charged with an offence not capital nor punishable by imprisonment in the state prison, then the punishment for the offence mentioned in this section, shall be by imprisonment in the county jail, not more than one year, or by fine not exceeding two hundred dollars.

Attempts to
aid escapes
from prison,
&c.

§ 13. Every person who shall aid or assist any prisoner in escaping or in attempting to escape from any officer or person, who shall have the lawful custody of such prisoner, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars.

Aiding an es-
cape from
officer.

§ 14. If any jailor or other officer, shall voluntarily suffer any prisoner in his custody upon conviction of any criminal charge to escape, he shall suffer, unless the prisoner was charged with, or convicted of a capital offence, the like punishment and penalties as the prisoner so suffered to escape was sentenced to, or would be liable to suffer upon conviction for the crime or offence wherewith he stood charged; and if the prisoner was charged with or convicted of a capital offence, he shall be punished by imprisonment in the state prison, not more than thirty years nor less than five years.

Suffering a
voluntary
escape from
prison.

§ 15. If any jailor or other officer, shall through negligence suffer any prisoner in his custody upon conviction or upon any criminal charge, to escape, or shall wilfully refuse to receive (him) into his custody any prisoner lawfully committed thereto, or [on] any criminal

Ib. negligent
escape, and
refusing to
receive
prisoner.

charge or convicted [conviction], or on any lawful process whatever, he shall be punished by imprisonment in the county jail not more than two years, or by fine not exceeding three hundred dollars.

Refusing to
arrest, and
suffering es-
cape.

§ 16. If any officer authorized to serve process, shall wilfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person convicted or charged with an offence, or shall wilfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars.

Refusing to
aid officers.

§ 17. If any person being required in the name of the United States of America, by any sheriff, deputy sheriff, coroner or constable, shall neglect or refuse to assist them in the execution of their office, in any criminal case or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in any case of escape or rescue of persons arrested upon civil process, he shall be punished by fine not exceeding one hundred dollars.

Refusing to
aid justices.

§ 18. If any justice of the peace upon view of any breach of the peace, or any other offence proper for his cognizance, shall require any person to apprehend and bring before him the offender, every person so required who shall refuse or neglect to obey such justice, shall be punished in the same manner as is provided in the next preceding section, for refusing assistance to a sheriff; and no person to whom such justice shall be known or shall declare himself to be a justice of the peace, shall be permitted to plead any excuse on pretence of ignorance of his office.

Falsely as-
suming to be
justice or of-
ficer.

§ 19. If any person shall falsely assume or pretend to be a justice of the peace, sheriff, deputy sheriff, coroner or constable, and shall take upon himself to act as such, to require any person to aid or assist him in any matter pertaining to the duty of a justice of the peace, sheriff, deputy sheriff, coroner or constable, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding two hundred dollars.

Disguising,
to obstruct
execution of
the law.

§ 20. Every person who shall in any manner disguise himself, with intent to obstruct the due execution of the law, or with intent to intimidate, hinder or interrupt any officer or any other person in the legal performance of his duty, or the exercise of his rights under the laws of the United States or of this territory, whether such intent shall be effected or not, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding one hundred dollars.

Concealing
and com-
pounding of
fences.

§ 21. If any person having knowledge of the commission of any offence, shall take any money or gratuity or reward, or any engagement therefor, upon an agreement or understanding, express or implied, to compound or conceal such offence, or not to prosecute therefor, or not to give evidence thereof, he shall, where such offence of which he had knowledge was punishable with death, be punished by imprisonment in the state prison, not more than two years; and where the offence of which he so had knowledge was punishable in any other manner, he shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding one hundred dollars.

§ 22. If any sheriff, constable or other officer, authorized to serve legal process, shall receive from a defendant or any other person, any money or other valuable thing as a consideration, reward or inducement for delaying or omitting to arrest any defendant or to carry him before a magistrate, or for delaying to take any person to prison, or for postponing the sale of any property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars.

Officers taking rewards for omitting duty.

AN ACT to provide for the punishment of offences against public policy.

§ 1. That every person who shall set up or promote any lottery, not authorized by law of this territory, for money, or shall dispose of any property of value, real or personal, by way of lottery, and every person who shall aid either by printing or writing, or shall in any way be concerned in setting up, managing or drawing any such lottery, or who shall in any house, shop or building owned or occupied by him or under his control, knowingly permit the setting up, managing or drawing of any such lottery, or the sale of any lottery ticket, or share of a ticket, or any other writing, certificate, bill, taken [token] or any other device, purporting or intended to entitle the holder, bearer or any other person, to any prize or interest or share of any prize to be drawn in a lottery, [shall] for every such offence be punished by imprisonment in the county jail, not more than six months, nor less than one month.

Setting up or promoting illegal lotteries.

§ 2. That every person who shall sell, either for himself or for any other person, or shall offer for sale or shall have in his possession, with intent to sell or to offer for sale, or to exchange or negotiate, or shall in any wise aid or assist in the selling, negotiating or disposing of a ticket in any such lottery, or a share of a ticket, or any such writing, certificate, bill, token or other device, as is mentioned in the preceding section, shall be punished by fine, not exceeding five hundred dollars, nor less than one hundred dollars.

Selling lottery ticket or aiding therein.

§ 3. That if any person shall after being convicted of any offence mentioned in either of the two preceding sections, commit the like offence, or any other of the offences therein mentioned, he shall be punished by imprisonment in the county jail, not more than two years, nor less than six months.

On second conviction.

§ 4. That every person who shall advertise any lottery ticket, or any share in such ticket for sale, either by himself or any other person, or who shall set up or exhibit any sign, symbol, or any emblematic or other representation of a lottery, or of the drawing thereof, or any such writing, certificate, bill, token or other device before mentioned, may be purchased or obtained, or shall in any way invite or entice, or attempt to invite or entice any other person to purchase or receive the same, shall be punished by fine, not exceeding one hundred dollars.

Advertising lottery ticket, &c.

§ 5. That every person who shall make or sell, or shall have in his possession, with intent to sell or exchange or negotiate, or who shall by printing, writing or otherwise assist in making or selling, or in attempting to sell, exchange or negotiate any false or fictitious lot-

Making or selling tickets in fictitious lottery.

tery ticket, or any share thereof, or any writing, certificate, bill, token or other device before mentioned, or any ticket or share thereof, in any fictitious or pretended lottery, knowing the same to be false or fictitious, or who shall receive any money or other thing of value for any such ticket or share of a ticket, or for any such writing, certificate, bill, token or other device, purporting that the owner, bearer or holder thereof shall be entitled to receive any prize or any share of a prize, or any other thing of value that may be drawn in any lottery, knowing the same to be false or fictitious, shall for every such offence be punished by imprisonment in the county jail, not exceeding two years, nor less than six months.

Defendant
to prove ge-
nuineness
of tickets,
&c.

§ 6. That upon a trial of an indictment for either of the offences mentioned in the preceding section, any ticket or share of a ticket, or any other writing or thing before mentioned, which the defendant shall have sold or offered for sale, or for which he shall have received any valuable consideration, shall be deemed to be false, spurious or fictitious, unless such defendant shall prove the same to be true and genuine, and to have been duly issued by the authority of some legislature within the United States, and that such lottery was existing and undrawn, and that such ticket or share thereof, or other writing or thing before mentioned, was issued by lawful authority and binding upon the persons who issued the same.

Prizes for-
feited to ter-
ritory.

§ 7. That all sums of money, and every other valuable thing drawn as a prize or share of a prize in any lottery, by any person being an inhabitant or resident within this territory, and all sums of money and other things of value received by such person, by reason of his being the owner or holder of any ticket or share of a ticket, in any lottery or pretended lottery, contrary to the provisions of this statute, shall be forfeited to the use of the territory, and may be recovered by an information to be filed, or by an action for money had and received, to be brought by the attorney-general or any district attorney, in the name and on behalf of the said territory.

Punishment
for keeping
gaming de-
vice.

§ 8. Every person who shall deal cards at the game called faro, and every person who shall keep, to be used in gaming, any gambling device commonly [called] E O, roulette, equality, or any other gambling device designed to be used in gaming, shall be punished by imprisonment in the county jail, not more than six months, nor less than one month.

Betting at ga-
ming table,
&c.

§ 9. Every person who shall bet any money or other property at or upon any gaming table, game or device prohibited by this act, shall be punished by fine, not exceeding twenty dollars, nor less than five dollars for each offence.

Permitting
gambling ta-
ble to be
used, &c.

§ 10. Every person who shall suffer any gaming table, bank or device prohibited in this act, to be set up or used for the purpose of gaming in any house, building, shed, lot, yard or garden to him belonging, or by him occupied, or of which he has the control, shall be punished by imprisonment in the county jail, not more than six months, nor less than one month.

Who not in-
capacitated
from testify-
ing.

§ 11. No person shall be incapacitated or excused from testifying, touching any offence committed by another against any of the provisions of this act relating to gaming, by reason of his having bet or played at the prohibited games or gaming devices; but the testimony

which may be given by such person shall in no case be used against such witness.

§ 12. Any officer who may be charged with the execution of any warrant to seize and bring before any magistrate any gaming apparatus or device, shall have power if necessary to break open doors for the purpose of executing the same, and for that purpose may summon to his aid the power of the county. Officer may break doors, &c.

§ 13. The presiding judge of each district court, shall at each term thereof give this act in special charge to the grand jury. Duty of judge.

§ 14. It shall be the duty of all sheriffs and constables in their proper county, to complain and give information of any breach of this act, and if any of the above named officers shall fail to complain and give information of any breach of this act which shall come to his knowledge, he shall, upon conviction thereof, forfeit his office and be removed from the same. Jb. sheriffs, &c.

AN ACT to provide for the punishment of offences against chastity, morality and decency.

§ 1. That every person who shall commit the crime of adultery, shall be punished by imprisonment in the county jail, not more than two years, nor less than six months, or by fine not exceeding three hundred dollars, nor less than seventy dollars, and when the crime is committed between a married woman and a man who is unmarried, the man shall be deemed guilty of adultery, and be liable to the same punishment. Adultery, how punished.

§ 2. That if any person who has a former husband or wife living, shall marry another person or shall continue to cohabit with such second husband or wife, in this territory, he or she shall, except in the cases mentioned in the third section, be deemed guilty of the crime of polygamy, and shall be punished by imprisonment in the state prison, not more than four years, nor less than two years, or by fine not exceeding five hundred dollars, nor less than three hundred dollars. Polygamy.

§ 3. That the provisions of the preceding section shall not extend to any person, whose husband or wife shall have been continually remaining beyond sea, or shall have voluntarily withdrawn from the other, and remained absent for the space of seven years together, the party marrying again not knowing the other to be living within that time; nor to any person who has been legally divorced from the bonds of matrimony, and was not the guilty cause of such divorce. Excepted cases.

§ 4. That if any man and woman, not being married to each other, shall lewdly and lasciviously cohabit and associate together, or if any man or woman, married or unmarried, shall be guilty of open and gross lewdness, and lascivious behaviour, every such person shall be punished by fine, not exceeding three hundred dollars, nor less [than] seventy dollars. Lewd and lascivious cohabitation.

§ 5. That if any man shall commit fornication, with any single woman, each of them shall be punished by imprisonment in the jail, not more than thirty days, or by fine not exceeding thirty dollars. Fornication.

§ 6. That if any woman shall conceal the death of any issue of her body, which, if born alive, would be a bastard, so that it may Mother concealing

death of
bastard.

not be known whether such issue was born alive or not, or whether it was not murdered, she shall be punished by imprisonment in the county jail, not more than one year, nor less than six months, or by fine not exceeding three hundred dollars, nor less than one hundred dollars.

Offence in-
serted in in-
dictment.

§ 7. That any woman who shall be indicted for the murder of her infant bastard child, may also be charged in the same indictment, with the offence described in the next preceding section, and if, on the trial, the jury shall acquit her of the charge of murder, and find her guilty of the other offence, judgment and sentence may be awarded against her for the same.

Keeping
house of ill-
fame.

§ 8. That every person, who shall keep a house of ill-fame, resorted to for the purpose of prostitution or lewdness, shall be punished by imprisonment in the county jail, not more than one year, nor less than six months, or by fine not exceeding three hundred dollars, nor less than one hundred dollars.

Lease of
such house
when void.

§ 9. That whenever the lessee of any dwelling house shall be convicted of the offence mentioned in the next preceding section, the lease or contract for letting such house, shall, at the option of the lessor, become void, and such lessor shall thereupon have the like remedy to recover the possession, as against a tenant for holding over after the expiration of his term.

Selling, &c.
obscene
books, &c.

§ 10. That if any person shall import, print, publish, sell or distribute any book, or any phamplet, ballad, printed paper or other thing, containing obscene language or obscene prints, pictures, figures or descriptions, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school or place of education, or shall buy, procure, receive or have in his possession, any such book, phamplet, ballad, printed paper or other thing, either for the purpose of loan, sale, exhibition or circulation, or with intent to introduce the same into any family, school or place of education, he shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding two hundred dollars.

Justice may
issue search
warrant for
such books,
&c.

§ 11. That any justice of the peace may issue a search warrant, for the purpose of searching for any obscene books, pamphlets, ballads, printed papers or other things mentioned in the next preceding section, in the manner provided by law; and all such things which shall be found by any officer, in executing a search warrant, or which shall be produced or brought into court, shall be safely kept so long as shall be necessary, for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court, before whom the same shall be brought.

When pro-
secutor to
receive part
of fine, &c.

§ 12. That when any person is convicted, under any of the provisions contained in either of the two next preceding sections, and sentenced to pay a fine, there shall be paid to the person who shall inform and prosecute such offender to conviction, one-half of the amount of the fine, which shall be actually paid by such convict; and the person who shall inform and prosecute, shall, notwithstanding, be competent to testify as witness in the prosecution.

Incest.

§ 13. That all persons being within the degrees of consanguinity, within which marriages are prohibited, or declared by law to be incestuous and void, who shall intermarry with each other, or who

shall commit adultery or fornication with each other, shall be punished by imprisonment in a county jail not more than two years nor less than six months.

§ 14. That every person who shall commit sodomy, or the crime Sodomy. against nature, either with mankind or any beast, shall be punished by imprisonment in the state prison, not more than five years nor less than one year.

§ 15. That every person who, on the Lord's day, or at any other time, shall wilfully interrupt or disturb any assembly of people met for the worship of God, within the place of such meeting, or out of it, shall be punished by fine not exceeding twenty dollars, nor less than five dollars. Disturbing religious worship.

§ 16. That if any person not being lawfully authorized, shall wilfully dig up, disinter, remove or convey any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, every such offender, and every person accessory thereto, either before or after the fact, shall be punished by imprisonment in the county jail not more than two years nor less than six months, or by fine not exceeding two hundred dollars. Violation of sepulchre.

§ 17. That if any person shall wilfully or with evil intent, destroy, mutilate, deface or remove any tomb, monument, gravestone or other structure or thing, placed or designed for a memorial of the dead; or any fence, railing, curb or other thing intended for the protection, or for the ornament of any tomb, monument, grave stone or other structure before mentioned, or of any enclosure for the burial of the dead, or shall wilfully and with evil intent destroy, mutilate, remove, cut, break or injure any tree, shrub or plant placed or being within any such enclosure, the person so offending shall be punished by fine not exceeding three hundred dollars, nor less than twenty-five. Injuring or defacing tombs, &c.

§ 18. That if any person shall open or make any highway or town way, or shall construct any rail road, turnpike or canal, or any other thing in the nature of a public easement, over, through, in or upon such part of any enclosure, being the property of a town, parish or religious society, or of private proprietors, as may be used for the burial of the dead, unless an authority for that purpose shall be specially granted by law, or unless the consent of such town, parish, or religious society, or private proprietors respectively, shall be first obtained, he shall be punished by fine not exceeding three hundred dollars nor less than sixty dollars, or by imprisonment in the county jail not more than one year nor less than six months. Making roads through burial grounds.

§ 19. That every person who shall cruelly beat or torture any horse, ox or other animal, whether belonging to himself or another, shall be punished by imprisonment in the county jail, not more than thirty days, or by fine not exceeding fifty dollars nor less than five dollars. Cruelty to animals.

§ 20. That no person shall keep open his shop, ware-house or work-house, or shall do any manner of labor or business, or work, except only works of necessity and charity, or be present at any dancing, or any public diversion, show or entertainment, or take part in any sport, game or play on the Lord's day, (commonly called Sunday;) and every person so offending shall be punished by a fine not exceeding two dollars for each offence. Labor prohibited on Sunday.

Sunday what time to include.

§ 21. That for the purposes of the provisions of the twentieth section, the Lord's day shall be understood to include the time between the midnight preceding, and the midnight following the said day.

Writ, &c. not to be served on Sunday.

§ 22. That no person shall serve or execute any civil process from midnight preceding to midnight following the said Lord's day, but such service shall be void, and the person serving or executing such process, shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process.

When persons observe other day as Sunday.

§ 23. That no person who conscientiously believes that the seventh, or any other day of the week ought to be observed as the Sabbath, and who actually refrains from secular business and labor on that day, shall be liable to the penalties of the twentieth section of this act, for performing secular business or labor on the Lord's day, or first day of the week, unless he wilfully disturbs some other person.

Power of justices under this act.

§ 24. Justices of the peace shall have jurisdiction of the offences mentioned in the fifth, fifteenth, nineteenth and twentieth sections of this act.

AN ACT to provide for the punishment of offences against the public peace.

Unlawful assemblies how suppressed.

§ 1. That if any persons to the number of twelve or more, any of whom being armed with any dangerous weapon, or if any persons to the number of thirty or more, whether armed or not, shall be unlawfully, riotously or tumultuously assembled in any city or town, it shall be the duty of the mayor and each of the aldermen of such city, and of the president and each of the trustees of such town, and of every justice of the peace living in such city or town, and of the sheriff of the county and his deputies, and also of every constable and coroner living in such city or town, to go among the persons so assembled, or as near them as may be with safety, and in the name of the United States of America to command all the persons so assembled, immediately and peaceably to disperse; and if the persons so assembled shall not thereupon immediately and peaceably disperse, it shall be the duty of each of the magistrates and officers to command the assistance of all persons there present, in seizing, arresting and securing in custody, the persons so unlawfully assembled, so that they may be proceeded with according to law.

Refusing to assist when required, &c.

§ 2. That if any person present, being commanded by any of the magistrates or officers mentioned in the preceding section, to aid or assist in seizing and securing such rioters or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, shall refuse or neglect to obey such command, he shall be deemed to be one of the rioters or persons unlawfully assembled, and shall be liable to be prosecuted therefor, and punished accordingly.

Neglect of officers, how punished.

§ 3. That if any mayor, alderman, president, trustee, justice of the peace, sheriff or deputy sheriff, constable or coroner having notice of any such rioters or tumultuous and unlawful assembly, as is mentioned in this act, in the city or town in which he lives, shall neglect or refuse immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or shall neglect or omit to exercise the authority with which he is invested by this act, for

suppressing such riotous or unlawful assembly, and for arresting and securing the offenders, he shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding three hundred dollars.

§ 4. That if any persons who shall be so riotously and unlawfully assembled, and who have been commanded to disperse, as before provided, shall refuse or neglect to disperse without unnecessary delay, any two of the magistrates or officers before mentioned may require the aid of a sufficient number of persons, in arms or otherwise, as may be necessary, and shall proceed in such manner as in their judgment shall be expedient, forthwith to disperse and suppress such unlawful, riotous or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

Officers may use force to quell disturbances.

§ 5. That whenever an armed force shall be called out for the purpose of suppressing any tumult or riot, or dispersing any body of men acting together by force, with intent to commit any felony or to offer violence to persons or property, or with intent by force or violence to resist or oppose the execution of the laws of this territory, such armed force when they shall arrive at the place of such unlawful, riotous or tumultuous assembly, shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all the persons who are committing any of the said offences, as they may have received from the governor, or from any judge of a court of record, or the sheriff of the county, and also such further orders as they there shall receive from any two of the magistrates or officers mentioned in the first section.

Armed force when called out, to obey governor.

§ 6. That if by reason of any of the efforts made by any of the said magistrates or officers, or by their direction, to disperse such unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse, though the number remaining may be less than twelve, any such person or other persons then present as spectators or otherwise, shall be killed or wounded, the said magistrates and officers, and all persons acting by their order or under their direction, shall be held guiltless and fully justified in law; and if any of the said magistrates or officers, or any person acting by their order or under their direction, shall be killed or wounded, all the persons so unlawfully, riotously and tumultuously assembled, shall be held answerable therefor.

Officers to be guiltless, though death ensue.

§ 7. That if any of the persons so unlawfully assembled, shall demolish, pull down or destroy any dwelling-house, or any other building, or any ship, steam-boat or vessel, he shall be punished by imprisonment in the state prison, not more than seven years nor less than three years.

Riotously destroying house, &c.

AN ACT to provide for the arrest and examination of offenders, commitment for trial and taking bail.

§ 1. That for the apprehension of persons charged with offences, the justices of the supreme court, of the district courts in vacation as well as in term time, and all justices of the peace, are authorized to issue process to carry into effect the provisions of this statute.

Officers empowered to act.

§ 2. Upon complaint made to any such magistrate that a criminal offence has been committed, he shall examine on oath the complain-

Complaints, warrants, &c. for witnesses.

ant and any witnesses produced by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offence has been committed, the court or justice shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed forthwith to take the person accused and bring him before the said court or justices, or before some other court or magistrate of the county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

In what
counties
warrants to
be executed.

§ 3. If any person against whom a warrant may be issued for an alleged offence committed in any county, shall either before or after the issuing of such warrant, escape from or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged in any county in this territory, and for that purpose may command aid, and exercise the same authority as in his own county.

When prisoner
brought
before mag-
istrate, &c.

§ 4. In all cases where the offence charged in the warrant is not punishable by death or imprisonment in the state prison, if the person arrested request that he may be brought before a magistrate of the county in which the arrest was made, for the purpose of entering into a recognizance without a trial or examination, the officer making the arrest shall carry him before a magistrate of that county, who may take from the person arrested a recognizance with sufficient sureties, for his appearance at the court having cognizance of the offence, and next to be holden in the county where it shall be alleged to have been committed, and the party arrested shall thereupon be liberated.

Proceedings
if magistrate
take bail.

§ 5. The magistrate who shall so let the person arrested to bail, shall certify that fact upon the warrant, and shall deliver the same, with the recognizance by him taken, to the person who made the arrest, who shall cause the same to be delivered without unnecessary delay to the clerk of the court before which the accused was recognized to appear; and on application of the complainant, the magistrate who issued the warrant, or the district attorney, shall cause such witnesses to be summoned to the same court as he shall think necessary.

If prisoner
not bailed,
officer how
to proceed.

§ 6. If the magistrate in the county where the arrest was made shall refuse to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall take him before the magistrate who issued the warrant, or in his absence before some other magistrate of the county in which the warrant was issued, to be proceeded with as hereafter directed.

Prisoner taken
to county
where
warrant is
issued.

§ 7. When the offence charged in any warrant is punishable with death, or by imprisonment in the state prison, the officer making the arrest in some other county, shall convey the prisoner to the county where the warrant issued, and he shall be proceeded with in the manner directed in the following section.

Id.

§ 8. Every person arrested by warrant for any offence where no other provision is made for his examination thereon, shall be brought before the magistrate who issued the warrant, or if he be absent or unable to attend, before some other magistrate of the same county, and the warrant with the proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

§ 9. Any magistrate may adjourn an examination or trial pending before himself, from time to time, as occasion shall require, not exceeding ten days at one time, without the consent of the defendant or person charged, and to the same or a different place in the county, as he shall think proper; and in such case, if the party is charged with a capital offence, he shall be committed in the mean time; otherwise he may be recognized in a sum, and with sureties, to the satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance he shall be committed to prison.

Examination
may be ad-
journd, &c.

§ 10. If the person so recognized shall not appear before the magistrate at the time appointed for such further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance, with the record of such default to the district court, and like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before that court.

Duty of ma-
gistrate
in case of
default.

§ 11. When such person shall fail to recognize, he shall be committed to prison, by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day to be named in the order; and on the day appointed, he may be brought before the magistrate by his verbal order to the same officer by whom he was committed, or by an order in writing to a different person.

When party
fails to re-
cognize.

§ 12. The magistrate before whom any person is brought upon a charge of having committed an offence, shall, as soon as may be, examine the complainant and [the] witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matters connected with such charge which may be deemed pertinent.

Examination
how con-
ducted.

§ 13. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross examination of the witness in support of the prosecution.

ib.

§ 14. The magistrate, while examining any witness, may at his discretion exclude from the place of examination all the other witnesses; he may also if requested, or if he see cause, direct the witness [witnesses] for or against the prisoner to be kept separate, so that they cannot converse with each other, until they shall have been examined.

ib.

§ 15. The testimony of the witnesses examined, shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses if required by the magistrate.

Testimony
reduced to
writing.

§ 16. If it shall appear to the magistrate upon the whole examination that no offence has been committed, or that there is not probable cause for charging the prisoner with the offence, he shall be discharged.

Prisoner
when dis-
charged.

§ 17. Persons charged with an offence punishable with death shall not be admitted to bail, but for all other offences, bail may be taken in such sum as, in the opinion of the magistrate, will secure the appearance of the person charged with the offence, at the court where such person is to be tried.

What offen-
ces bailable.

§ 18. If it shall appear that an offence has been committed, and that there is probable cause to believe the prisoner guilty, and if the

When pri-
soner to be
bailed or
committed.

offence be bailable by the magistrate, and the prisoner offer sufficient bail, it shall be taken and the prisoner discharged; but if no sufficient bail be offered, or the offence be not bailable by the magistrate, the prisoner shall be committed for trial.

Witnesses to recognize.

§ 19. When the prisoner is admitted to bail, or committed by the magistrate, he shall also bind by recognizance such witnesses against the prisoner as he shall deem material, to appear and testify at the next court having cognizance of the offence, and in which the prisoner shall be held to answer.

It. with sureties.

§ 20. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security be given, such magistrate may order the witness to enter into a recognizance, with such sureties as may be deemed necessary, for his appearance at court.

Recognizances of married women, &c.

§ 21. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may in his discretion take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

Witnesses refusing to recognize.

§ 22. All witnesses required to recognize either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

Who to let prisoners to bail.

§ 23. Any justice of the supreme court, or any two justices of the peace in any county, on application of any prisoner committed for a bailable offence, may inquire into the case and admit such prisoners to bail; and any person committed for not finding sufficient sureties to recognize for him, may be admitted to bail by either of the judges or justices of the peace: *Provided*, That no person shall be admitted to bail by a justice of the peace in a less sum than was required by the order of commitment.

Magistrates may have associates.

§ 24. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more magistrates of the same county, and they may together execute the powers and notices [duties] before mentioned, but no fees shall be taxed for such associates.

Examinations, &c. to be returned.

§ 25. All examinations and recognizances taken by any magistrate, in pursuance of the provisions of this act, shall be certified and returned by him to the district attorney, or the clerk of the court before which the party charged is bound to appear, on or before the first day of the sitting thereof; and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith by rule of court, and in case of disobedience, may be proceeded against by attachment as for contempt.

Commitments, when to be superseded, &c.

§ 26. When any person shall be committed to prison, or shall be under recognizance to any charge of assault and battery or other misdemeanor, for which the party injured may have a remedy by civil action, except when the offence was committed by or upon any sheriff or other officer of justice, or riotously or with intent to commit a felony, of [if] the party injured shall appear before the magistrate who made the commitment or took the recognizance, and acknowledge in writing that he has received satisfaction for the injury, the

magistrate may at his discretion on payment of all the costs which have accrued, discharge the recognizance or supersede the commitment by an order under his hand; and may also discharge all recognizances and supersede the commitment of all witnesses in the case.

§ 27. Every such order of the magistrate, discharging the recognizance of the party or witnesses, shall be filed in the office of the clerk before the sitting of the court before which they are bound to appear; and every order superseding the commitment of the party charged, or any witnesses, shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall forever bar all remedy by civil action for such injury.

Orders therefor, how filed, and effect.

§ 28. When any person under recognizance in any criminal prosecution, either to appear and answer or to prosecute an appeal, or to testify in any court, shall fail to perform the condition of such recognizance, his default shall be recorded, and process shall be issued against the persons bound by the recognizance, or such of them as the prosecuting officer shall direct; but in the suit on such recognizance no costs shall be taxed for travel.

Proceedings on forfeited recognizances.

§ 29. Any surety in such recognizance may by leave of the court, ^{1b.} after default, and either before or after the process has been issued against him, pay to the county treasurer or to the clerk of the court, the amount for which he was bound as surety, with such costs, as the court shall direct, and be thereupon forever discharged.

§ 30. When any action is brought in the name of the United ^{1b.} States of America against a principal or surety in any recognizance entered into, either by a party or a witness in any criminal prosecution, and the penalty of such recognizance shall be adjudged forfeited, the court may, on application of any party defendant, remit any part or the whole of such penalty, and may render judgment thereon for the United States of America, according to the circumstances of the case and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable.

§ 31. No such action brought on a recognizance as mentioned in ^{1b.} the preceding section, shall be barred or defeated, nor shall judgment thereon be arrested by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default shall happen, nor by reason of any such defeat [defect] in the form of the recognizance, if it sufficiently appear from the tenor thereof at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance.

AN ACT to regulate indictments and proceedings in criminal cases before trial.

§ 1. That any person held in prison on any charge of having committed a crime, shall be discharged if he be not indicted before the end of the second term of the court at which he is held to answer, unless it shall appear, to the satisfaction of the court, that the witnesses on the part of the government have been enticed or kept away, or are detained and prevented from attending the court by sickness or some inevitable accident.

When person accused of crime to be discharged.

Limitation of
criminal
prosecu-
tions.

§ 2. That an indictment for a capital crime may be found at any period; all other indictments, for other crimes, shall be found, and filed within six years after the commission of the offence; but any period during which the party charged was not usually and publicly resident within the territory shall not be reckoned as part of the six years.

When per-
son taken
into custody.

§ 3. That if the grand jury attending the district court shall find, and return to the court, an indictment for any crime, against a person or persons who are not already in custody, process shall forthwith be issued to arrest the party charged with such offence.

Copy of in-
dictment
furnished.

§ 4. That as soon as may be, after the finding of such indictment for a capital crime, the party charged shall be served with a copy thereof, by the sheriff or his deputy, at least twenty-four hours before trial.

Indictments,
when tried,
&c.

§ 5. That all persons indicted shall be tried before the district court, and any prisoner indicted for a crime punishable with death, shall, on demand upon the clerk, by himself or his counsel, have a list of the jurors returned delivered to him, at least twenty-four hours before trial, and shall also have process to summon such witnesses as are necessary to his defence, at the expense of the territory.

No fees for
copy.

§ 6. That every person indicted for an offence for which he may be imprisoned in the state prison, shall, if he be under recognizance or in custody to answer for such offence, be entitled to a copy of the indictment and of all endorsements thereon, without paying any fees therefor.

Prosecuting
officers to
issue sub-
pœnas.

§ 7. That the district attorney and all other prosecuting officers may, in all cases, issue subpoenas for witnesses to appear and testify on behalf of the United States of America; and the subpoenas, under the hand of such officer, shall have the same force, and be obeyed in the same manner and under the same penalties in case of default, as if issued by the clerk.

When fees
need not be
tendered.

§ 8. That it shall not be necessary to pay or tender any fees to any witness who is subpoenaed in any criminal prosecution, but every such witness shall be bound to attend, and [be] punishable for non-attendance, in the same manner as if the fees allowed by law had been paid to him.

When criminal
prosecu-
tions may be
stayed.

§ 9. That whenever an indictment is found against any person for an assault and battery, or other misdemeanor for which the party injured may have a remedy by civil action, except where the offence was committed by or upon any sheriff, or other officer of justice, or riotously or with intent to commit a felony, if the party injured shall appear in court where such indictment is pending and acknowledge satisfaction for the injury sustained, the court may, on payment of the costs accrued, order all further proceedings to be stayed, and discharge the defendant from the indictment, which shall forever bar all remedy for such injury by civil action.

Prisoner
need not be
asked, &c.

§ 10. That when any person is arraigned upon an indictment it shall not be necessary, in any case, to ask him how he will be tried.

Refusing to
plead.

§ 11. That if, on the arraignment of any person who is indicted, he shall refuse to plead or answer, or shall not confess the indictment to be true, the court shall order a plea of not guilty to be entered, and thereupon the proceedings shall be the same as if he had pleaded not guilty to the indictment.

§ 12. That every person held in prison upon an indictment shall, if he require it, be tried as soon as the next term of the court after the expiration of six months from the time when he was imprisoned, or shall be bailed upon his own recognizance, unless it shall appear, to the satisfaction of the court, the witnesses on behalf of the government have been enticed or kept away, or are detained and prevented from attending the court by sickness, or some inevitable accident.

Indicted person in prison, when tried.

§ 13. That when a plea in abatement, or other dilatory plea, to an indictment shall be offered, the court may refuse to receive it, until the truth thereof shall be proved by affidavit, or other evidence.

Plea in abatement may be refused, unless, &c.

AN ACT to provide for the trial of criminal cases.

§ 1. That issues of fact, joined upon any indictment, shall be tried by a jury drawn and returned in the manner prescribed by law for the trial of issues of fact in civil causes.

Issues of fact, how tried.

§ 2. No member of the grand jury, which has found an indictment, shall be put upon the jury for the trial of such indictment if challenged for that cause by the defendant.

Grand juror challenged.

§ 3. Every person indicted for any offence, shall, when the jury is empannelled for his trial, be entitled to the same challenges that are [allowed] by law to defendants in civil causes.

How many challenges allowed.

§ 4. The district attorney, and any other officer prosecuting an indictment, shall be entitled to the same challenges that are by law allowed to parties in civil causes.

Ib.

§ 5. Any person who is put on trial for an offence punishable with death, shall be allowed to challenge peremptorily twenty-four of the persons returned as jurors and no more.

Peremptory challenges.

§ 6. No person whose opinions are such as to preclude him from finding any defendant guilty of an offence punishable with death, shall be compelled or allowed to serve as a juror on the trial of an indictment for such an offence.

What to disqualify juror.

§ 7. The following oath shall be administered to all jurors for the trial of all criminal cases not capital: "You shall well and truly try the issue between the United States of America and the defendant, (or the defendants, as the case may be,) according to evidence, so help you God." In capital cases the following oath shall be administered to the jurors: "You shall well and truly try, and true deliverance make, between the United States of America and the prisoner at the bar whom you shall have in charge, according to evidence, so help you God."

Oaths of jurors.

§ 8. Any juror who is conscientiously scrupulous of taking either of the oaths above described, shall be allowed to make affirmation, substituting the words, "this you do under the pains and penalties of perjury," instead of the words "so help you God."

Affirmation of jurors.

§ 9. No person indicted for a felony or for any offence punishable by imprisonment in the state prison shall be tried unless personally present during the trial; persons indicted for smaller offences, may, at their own request, by leave of the court be put on trial in their absence by an attorney duly authorized for that purpose.

When deft. to be present and when absent.

§ 10. The court may order a view by any jury empannelled to try a criminal case.

View may be ordered.

When convicted on part of offence charged.

§ 11. Whenever any person, indicted for a felony, shall on trial be acquitted by verdict of part of the offence charged in the indictment, and convicted of the residue thereof, such verdict may be received and recorded by the court, and thereupon the person charged shall be adjudged guilty of the offence, if any, which shall appear to the court to be substantially charged by the residue of such indictment, and shall be sentenced and punished accordingly.

When acquitted by reason of insanity.

§ 12. When any person, indicted for an offence, shall on trial be acquitted by the jury by reason of insanity, the jury in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends if they shall give bonds with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged.

Person acquitted, not liable for fees.

§ 13. No prisoner or person under recognizance, who shall be acquitted by verdict or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees of office, or for any charge for subsistence while he was in custody.

What defects of form not to vitiate indictment.

§ 14. No indictment shall be quashed or deemed invalid, nor shall the judgment or proceedings thereon be arrested or affected by reason of the omission or misstatement of the title, occupation, or estate or degree of the defendant or of the name of the city, town, county or place of his residence, nor by reason of the omission if [of] the words "force and arms," or the words "against the peace," nor by reason of omitting to charge any offence to have been committed contrary to the form of the statute or statutes, provided that such omission or misstatement do not tend to the prejudice of the defendant.

AN ACT to provide for appeals, new trials and exceptions in criminal cases.

Appeals from justices to district court.

§ 1. That every person convicted before a justice of the peace of any offence, may appeal from the sentence to the district court then next to be held in the same county, and such appellant shall be committed to abide the sentence of said justice until he shall recognize to the United States of America in such reasonable sum with such sureties as said justice shall require, with condition to appear at the court appealed to, and there to prosecute his appeal and to abide the sentence of the court thereon, and in the mean time to keep the peace and be of good behavior.

Duty of justice on appeal, &c.

§ 2. That the justice on such appeal shall make a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance, if any shall be taken, to the clerk of the court appealed to; and the fees of the justice therefor shall be paid from the county treasury in like manner as other costs in criminal prosecutions are paid.

Appellants not to advance fees.

§ 3. That the appellant shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same; but if convicted in the district court, or if sentenced for failing to prosecute his

appeal, he may be required, as part of his sentence, to pay the whole or any part of the costs of prosecution.

§ 4. That if the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the district court may award sentence against him for the offence whereof he was convicted, in like manner as if he had been convicted thereof in that court. And if he is not then in custody, process may be issued to bring him into court to receive sentence.

When appeal is not prosecuted.

§ 5. That whenever, upon suit brought upon any recognizance to prosecute an appeal, the penalty thereof shall be adjudged to be forfeited, or when by leave of the court such penalty shall have been paid to the county treasurer or to the clerk of the court, without a suit or before judgment shall be given in manner by law provided, if by law any forfeiture shall accrue to any person by reason of the offence of which the appellant was convicted, the court may award to him such sum as he may be entitled to out of such forfeiture.

Forfeiture accruing, court to award it.

§ 6. That the district court may, at the term in which the trial of any indictment shall be had, or within one year thereafter, or the supreme court within one year thereafter, on the petition or motion in writing of the defendant, grant a new trial for any cause for which by law a new trial may be granted, or when it shall appear to the court that justice has not been done, and on such terms or conditions as the court may direct.

New trials, when granted.

§ 7. That any person who shall be convicted of an offence before the district court, being aggrieved by any opinion, direction or judgment of the court in any matter of law, may allege exceptions to such opinion, direction or judgment, which exceptions being reduced to writing in a summary mode, and presented to the court a convenient time before the end of the term, and found conformable to the truth of the case, shall be allowed and signed by the judge, and thereupon all further proceedings in that court shall be stayed, unless it shall clearly appear to the judge that such exceptions are frivolous, immaterial or intended only for delay; and in that case judgment may be entered and sentence awarded in such manner as the judge may deem reasonable, notwithstanding the allowance of such exceptions.

Exceptions may be granted, &c.

§ 8. That if upon the trial of any person who shall be convicted in said district court, any question of law shall arise, which in the opinion of the judge shall be so important or so doubtful as to require the decision of the supreme court, he shall, if the defendant desire it or consent thereto, report the case so far as may be necessary to present the question of law arising therein, and thereupon all proceedings in that court shall be stayed.

Judge when to make report.

§ 9. That any person not being accused with an offence punishable with death, who shall file exceptions, or for whose benefit a report shall be made by the judge, as is provided in the two preceding sections, may recognize to the United States of America in such sum as the judge shall order, with sufficient sureties for his personal appearance at the supreme court at the then next term thereof, and enter and prosecute his exceptions with effect, and abide the sentence thereon, and in the mean time keep the peace and be of good behavior.

Proceedings on exceptions, to be reported.

§ 10. That if any person, so filing exceptions, or desiring a report to be made by the judge, shall not so recognize, he shall be committed.

Party refusing to recognize, to be committed.

ted to prison to await the decision of the supreme court; and in that case, the clerk of the court, in which the conviction was had, shall file a certified copy of the record and proceedings in the case in the supreme court, and the court shall have cognizance thereof and consider and decide the questions of law, and shall render such judgment, and award such sentence, or make such order thereon as law and justice shall require; and if a new trial is ordered, the cause shall be remanded to said district court for such new trial, but the proceedings here prescribed shall not deprive any party of his writ of error for any error or defect appearing of record.

AN ACT respecting judgments in criminal cases, and the execution thereof.

Sentence in certain cases.

§ 1. That in any case of legal conviction where no punishment is provided by statute, the court shall award such sentence as is according to the degree and aggravation of the offence, not cruel or unusual, nor repugnant to the constitutional rights of the party.

Sureties to keep the peace when required.

§ 2. Every court before whom any person shall be convicted upon an indictment for any offence not punishable with death, or by imprisonment in the state prison or county jail, may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties, in a reasonable sum, to keep the peace or to be of good behavior, or both, for any term not exceeding two years, and to stand committed until he shall so recognize.

Forfeiture of recognizance.

§ 3. In case of the breach of the condition of any such recognizance, the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace.

Sheriff to execute sentences.

§ 4. Whenever any person convicted of an offence shall be sentenced to pay a fine or costs, or to be imprisoned in the county jail or state prison, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be a sufficient authority for such sheriff to execute such sentence, and he shall execute the same accordingly.

Solitary imprisonment to precede hard labor.

§ 5. In every case in which the punishment of imprisonment in the state prison is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he shall also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and in the execution of such punishment the solitary imprisonment shall precede the punishment by hard labor unless the court shall otherwise order.

Sentence of punishment when executed.

§ 6. Whenever it shall appear to the court, at the time of passing sentence upon any convict that is punished by confinement in the state prison or county jail, that there is no jail in the county in which the offence was committed, suitable for the confinement of such convict, the court may order the sentence to be executed in any county in this territory in which there may be a jail suited to that purpose; and the expenses of supporting such convict shall be borne (if such convict was sentenced to imprisonment in the county jail,) by the county in which the offence was committed.

§ 7. When any person shall be convicted of any crime for which sentence of death shall be awarded against him, the clerk of the court, as soon as may be, shall make out and deliver to the sheriff of the county a certified copy of the whole record of the conviction and sentence, and the sheriff shall forthwith transmit the same to the governor; and the sentence of death shall not be executed upon such convict until a warrant shall be issued by the governor, under the seal of the territory, with a copy of the record thereto annexed, commanding the sheriff to cause execution to be done, and the sheriff shall thereupon cause to be executed the judgment and sentence of the law upon such convict.

Proceedings on conviction for capital offences.

§ 8. If it shall appear to the satisfaction of the governor that any convict who is under sentence of death has become insane, the warrant for his execution may be delayed, or if such warrant has been issued, the execution thereof may be respited from time to time, so long as the governor shall think proper; and if any female convict who is under sentence of death shall be quick with child, the governor shall forbear to issue a warrant for her execution, or if such warrant has been issued, the execution thereof shall be respited until it shall appear to the satisfaction of the governor that such female is no longer quick with child.

1b. when convict insane or quick with child.

§ 9. The punishment of death shall in all cases be inflicted by hanging the convict by the neck until he be dead; and the sentence shall, at the time directed by the warrant, be executed at such place within said county as the sheriff shall select.

Sentence of death how executed.

§ 10. Whenever the punishment of death shall be inflicted upon any convict, in obedience to a warrant from the governor, the sheriff of the county shall be present at the execution, unless he shall be prevented by sickness or other casualty, and he may have such military guard as he may think proper; he shall return the warrant with a statement under his hand of his doings therein, as soon as may be after the said execution, to the governor, and shall also file in the clerk's office of the court where the conviction was had, an attested copy of the warrant and statement aforesaid; and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

Sheriff present at execution.

To return warrant.

AN ACT to prevent the commission of crimes.

§ 1. That the justices of the supreme court and district courts in vacation, as well as in open court, and all justices of the peace, shall have power to cause all laws made for the preservation of the public peace, to be kept; and in the execution of that power may require persons to give security to keep the peace, or for their good behavior or both, in the manner provided in this statute.

Officers authorized to keep the peace.

§ 2. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complaint [complainant] and any witness who may be produced, on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant.

Complaint how made.

§ 3. If, upon examination, it shall appear that there is just cause to fear that any such offence may be committed, the magistrate shall

Arrest.

issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

Trial and recognizance.

§ 4. When the party complained of is brought before the magistrate, he shall be heard in his defence, and he may be required to enter into a recognizance, and with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this territory, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding six months; but he shall not be ordered to recognize for his appearance at the district court, unless he is also charged with some offence for which he ought to be held to answer at said court.

When discharged.

§ 5. Upon complying with the order of the magistrate the party complained of shall be discharged.

Refusing to recognize, committed.

§ 6. If the person so ordered to recognize shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

Complainant when to pay costs.

§ 7. If, upon examination, it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he shall order the complainant to pay the costs of prosecution who shall thereupon be answerable to the magistrate and the officer for their fees as for his own debt.

Payment in other cases.

§ 8. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace or for his good behaviour, the magistrate may further order the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

Appeal allowed.

§ 9. Any person aggrieved by the order of any justice of the peace, requiring him to recognize as aforesaid, may, on giving the security required, appeal to the district court next to be holden in the same county, or that county to which said county is attached for judicial purposes.

Witness to recognize on appeal.

§ 10. The magistrate from whose order an appeal is so taken, shall require such witnesses as he may think necessary to support the complaint to recognize for their appearance at the court to which the appeal is made.

Proceedings on appeal.

§ 11. The court before which such appeal is prosecuted, may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution, as he may deem just and reasonable.

Recognizance, when to remain in force.

§ 12. If any party appealing shall fail to prosecute his appeal, his recognizance shall remain in full force and effect as to any breach of

the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as a security for any costs, which shall be ordered by the court appealed to, to be paid by the appellant.

§ 13. Any person committed for not finding sureties, or refusing to recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace on giving such security as was required. Not recognizing, how discharged.

§ 14. Every recognizance taken in pursuance of the foregoing provisions shall be transmitted by the magistrate to the district court for the county on or before the first day of the next term, and shall be there filed of record by the clerk. Recognizances transmitted to court.

§ 15. Any person who shall, in the presence of any magistrate mentioned in the first section of this statute, or before any court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such court or magistrate, shall contend, with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace and being of good behavior, for a term not exceeding six months, and in case of refusal may be committed as before directed. When required on view of court, &c.

§ 16. If any person shall go armed with a dirk, dagger, sword, pistol or pistols, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family, or property, he may, on complaint of any other person having reasonable cause to fear an injury or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appealing as before provided. Persons going armed to give security, &c.

§ 17. Whenever, upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case shall render just and reasonable. Part of penalty remitted.

§ 18. Any surety in a recognizance to keep the peace or for good behavior or both, shall have the same authority and right to take and surrender his principal as if he had been bail for him in a civil cause, and upon such surrender shall be discharged and exempt from all liability for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged. Surety may surrender principal.

AN ACT making general provisions concerning crimes and punishments.

§ 1. That every person who shall be aiding in the commission of any offence, which shall be a felony either at common law or by any statute now made, or which shall be hereafter made, or who shall be accessory thereto before the fact, by counselling, hiring or otherwise procuring such felony to be committed, shall be punished in the same manner as is or shall be prescribed for the punishment of the principal felon. Accessory to felony before the fact, how punished.

1b.

§ 2. That every person who shall counsel, hire or otherwise procure any offence to be committed which shall be a felony, either at common law or by any statute now made or which shall hereafter be made, may be indicted and convicted as an accessory before the fact, either with the principal felon or after the conviction of the principal felon; or he may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been convicted, or shall or shall not be amenable to justice, and in the last mentioned case may be punished in the same manner as if convicted of being an accessory before the fact.

Accessory,
how tried.

§ 3. Any person charged with the offence in the preceding section may be indicted, tried and punished in the same court and in the same county where the principal felon might be indicted and tried, although the offence of counselling, hiring or procuring the commission of such felony may have been committed either within or without the limits of this territory.

After fact,
how punished.

§ 4. Every person not standing in the relation of husband or wife or parent, a grand-parent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, who, after the commission of any felony, shall harbor, conceal or maintain, or assist any principal felon or accessory before the fact, or shall give such offender any other aid, knowing that he had committed a felony or had been accessory thereto before the fact, with intent that he shall avoid or escape from detection, arrest, trial or punishment, shall be deemed an accessory after the fact, and shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred dollars.

How tried.

§ 5. Every person who shall become an accessory after the fact to any felony, either at common law or by any statute made or which shall hereafter be made, may be indicted, convicted and punished, whether the principal felon shall or shall not have been convicted previously, or shall, [or shall] not be amenable to justice by any court having jurisdiction to try the principal felon, and either in the county where such person shall have become an accessory or in the county where such principal felony shall have been committed.

In cases of
libel, what
proved in
defence.

§ 6. In every prosecution for writing or publishing a libel the defendant may give in evidence, in his defence upon the trial, the truth of the matter contained in the publication charged as libellous: *Provided*, That such evidence shall not be deemed sufficient justification, unless it shall be further made to appear on the trial that the matter charged as libellous, was published with good motives and for justifiable ends.

Offences
committed
near boundary
of
county.

§ 7. Offences committed on the boundary lines of two counties, or within one hundred rods of the dividing line between them, may be alleged in the indictment to have been committed in either of them, and may be prosecuted and punished in either county.

When mortal
wound
given, &c.

§ 8. If any mortal wound shall be given, or other violence or injury shall be inflicted, or any poison shall be administered in one county, by means whereof death shall ensue in another county, the offence may be prosecuted in either county.

1b. without
the territory
&c.

§ 9. If any such mortal wound shall be inflicted or other violence, or injury done, or poison administered, either within or without the limits of this territory, by means whereof death shall ensue in any

county thereof, such offence may be prosecuted and punished in the county where such death may happen.

§ 10. In any prosecution for the offence of embezzling the money, bank notes, checks, drafts, bills of exchange or other security for money of any person, by a clerk, agent or servant of such person, it shall be sufficient to allege generally in the indictment an embezzlement of money to a certain amount, without specifying any particulars of such embezzlement, and on the trial evidence may be given of any such embezzlement committed, within six months next after the time stated in the indictment, and it shall be sufficient to maintain the charge in the indictment, and shall not be deemed a variance if it shall be proved that any money, bank note, check, draft, bill of exchange or other security for money of such person, of whatever amount, was fraudulently embezzled by such clerk, agent or servant within the said period of six months.

Embezzlement and evidence thereof.

§ 11. In the prosecution of any offence committed upon or in relation to, or in any way affecting any real estate, or any offence committed in stealing, embezzling, destroying, injuring or fraudulently receiving or concealing any money, goods or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on the trial that at the time when the offence was committed, either the actual or constructive possession, or the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged in the indictment, or other accusation, to be the owner thereof.

Proof of ownership of property embezzled, &c.

§ 12. All fines and forfeitures imposed as a punishment for any offence, or for the violation or neglect of any duty imposed by a statute, where no other appropriation is expressly made, shall be deemed to be appropriated, and shall accrue to the use of the territory; and the same, together with all fines and forfeitures expressly appropriated to the use of the territory, or to any county or town, may be prosecuted for and recovered by indictment in the district court; or when the amount or value thereof does not exceed fifty dollars the same may be prosecuted for by complaint before a justice of the peace, who shall have jurisdiction thereof concurrently with the district court.

Fines, &c. to whose use to accrue, &c.

§ 13. The plea of benefit of clergy, and the distinction between murder and petit treason are abolished, and the last named offence shall be prosecuted and punished as murder.

Benefit of clergy and petit treason abolished.

AN ACT regulating the management of prisons.

§ 1. That the common jails now erected, or which shall hereafter be erected in the several counties in the charge of the respective sheriffs, shall be used as prisons:

Jails used as prisons, for what purposes.

1st. For the detention of persons charged with offences, and duly committed for trial.

2ndly. For the detention of persons who may be duly committed to secure their attendance as witnesses on the trial of any criminal cause.

3dly. For the confinement of persons committed pursuant to a sentence, upon a conviction for an offence, and of all other persons duly committed for any cause authorized by law.

4thly. For the confinement of persons who may be sentenced to imprisonment in the state prison, until a suitable state prison shall be provided.

Expenses of
convicts, by
whom paid.

§ 2. That all charges and expenses for safe keeping and maintaining convicts, who have been sentenced to confinement in the state prison, shall be paid out of the treasury of the territory yearly, the accounts of the keeper being first allowed by the board of county commissioners of the county where the convict shall be confined, and the expenses of safe keeping and maintaining persons charged with offences and duly committed for trial, and of those who are sentenced to confinement in the county jail, or who may be committed for the non-payment of any fine, shall be paid out of the treasury of the county; the accounts of the keeper being in like manner allowed by the board of county commissioners: *Provided*, That the territory nor any county shall never pay more than three and a half dollars a week for the support of any person confined as aforesaid.

Inspectors of
prisons;
their duty.

§ 3. That the county commissioners in the several counties shall be inspectors of the prisons in their respective counties, and shall visit them at least twice in each year, and shall examine fully into the condition of each prison, as to health, cleanliness and discipline; and the keeper thereof shall lay before them a calendar, setting forth the name, age and cause of committal of each prisoner; and if it shall appear to the said inspectors that any of the provisions of law have been violated or neglected, they shall forthwith give notice thereof to the district attorney of the county.

Sheriff, &c.
not to sell
liquor, ex-
cept, &c.

§ 4. That no sheriff, jailer or keeper of any prison shall, under any pretence, give, sell or deliver to any person committed to prison for any cause whatever, any spirituous liquor, or any mixed liquor, part of which is spirituous, or any wine, cider or strong beer, unless a physician shall certify in writing that the health of such prisoner requires it, in which case he may be allowed the quantity prescribed, and no more; and no sheriff, jailer or keeper as aforesaid, shall put or keep in the same room, male and female prisoners together.

Males and
females not
in same
room.

Penalty for
violating last
section.

§ 5. That if any sheriff, jailer or keeper of any prison shall sell or deliver to any prisoner in his custody, or shall willingly or negligently suffer any such prisoner to have any liquor, prohibited in the fourth section of this act, or shall place or keep together prisoners of different sexes, contrary to the provisions of the said fourth section, he shall in each case forfeit and pay for the first offence, the sum of twenty-five dollars to the use of the county; and such officer shall, on a second conviction, be further sentenced to be incapable of holding the office of sheriff, deputy sheriff, jailer or keeper of any prison, for the term of five years.

Penalty for
selling li-
quor.

§ 6. That if any person other than is mentioned in the preceding section shall sell or deliver to any person committed for any cause whatever, any liquor, prohibited in this act, or shall have in his possession in the precincts of any prison, any such liquors, with intent to carry or deliver the same to any prisoner confined therein, he shall be punished by fine not exceeding fifteen dollars.

Prison to be
kept clean,
& prisoners
how treated.

§ 7. That the keeper of such prison shall see that the same is constantly kept in a cleanly and healthful condition, and shall see that strict attention is constantly paid to the personal cleanliness of all the prisoners in his custody, as far as may be, and shall cause the

shirt of each prisoner to be washed once at least in each week. Each prisoner shall be furnished daily with as much clean water as he shall have occasion for, either as drink or for the purposes of personal cleanliness, and with a clean towel once a week, and shall be served three times each day with wholesome food, which shall be well cooked, and in sufficient quantity.

§ 8. That the keeper of each prison shall provide, at the expense of the county, for each prisoner under his charge, who may be able and desirous to read, a copy of the Bible or New Testament, to be used by such prisoner at proper seasons during his confinement; and any minister of the gospel disposed to aid in reforming the prisoners, and instructing them in their moral and religious duties, shall have access to them at seasonable and proper times.

Prisoners to have bible, &c.

§ 9. That the sheriffs of the respective counties shall keep a true and exact calendar or register of all prisoners committed to any prison under their care, and the same shall be kept in a book to be provided by the county commissioners for that purpose; said calendar shall contain the names of all persons who shall be committed to prison, their places of abode, the time of their commitment, shall state the cause of their commitment, and the authority that committed them, and if they are committed for criminal offences, shall contain a description of their persons; and when any prisoner shall be liberated, said calendar shall state the time when, and the authority by which such liberation took place, and if any prisoner escapes, shall also state particularly the time and manner of said escape.

Sheriff to keep calendar, &c.

§ 10. That at the opening of each session of the district court within his county, the sheriff shall return a copy of said calendar under his hand, to the judge holding said court; and if any sheriff shall neglect or refuse so to do, he shall be punished by fine not exceeding three hundred dollars.

To return copy to court.

§ 11. That in the jails erected, or which shall be hereafter erected in this territory, there shall be provided sufficient and convenient apartments for confining prisoners for debt, separate and apart from felons and other criminals, and also for confining persons of different sexes, separate and apart from each other.

Jails how constructed, &c.

§ 12. That whenever any person shall be duly sentenced to solitary imprisonment, and confinement at hard labor in the state prison, or either of them, the sheriff of the proper county is required to execute such sentence of solitary imprisonment until a suitable state prison shall be provided, by confining such convict in one of the cells of the jail, or if there be no such cell, then in the most retired and solitary part of the jail; and during the time of such solitary imprisonment, the convict shall be fed with bread and water only, unless other food shall be necessary for the preservation of his life; and no intercourse shall be allowed with such convict during such confinement, except for the conveyance of food and other necessary purposes.

Sentence of solitary confinement how executed.

§ 13. That whenever any person shall be confined in any jail, pursuant to the sentence of any court, if such sentence or any part thereof shall be that he be confined at hard labor, the sheriff of the county in which such person shall be confined, shall furnish such convict with suitable tools and materials to work with, if in the opinion of the said sheriff, the said convict can be profitably employed,

Sheriff to furnish tools &c. to prisoners.

either in the jail, or yard thereof, and the expense of said tools and materials shall be defrayed by the county in which said convict shall be confined, and said county shall be entitled to his earnings.

Unruly
prisoner
how treated.

§ 14. That whenever any person committed to prison for any cause whatever, shall be unruly or shall disobey any of the regulations established for the management of prisons, the sheriff or keeper may order such prisoner to be kept in solitary confinement and fed on bread and water only, as is provided in the twelfth section of this act, for a period not exceeding twenty days for each offence.

Bedding and
clothing to
be furnish-
ed.

§ 15. That the keeper of each prison shall furnish necessary bedding, clothing and fuel and medical aid, for all prisoners who shall be in his custody, and shall be paid therefor according to the provisions of the second section of this act, and such payment shall not be deducted from the sum he is entitled to receive, for the weekly support of the prisoners, according to the provisions of said second section.

Penalty for
escaping
from prison.

§ 16. That if any person who may be in any prison, under sentence of imprisonment in the state prison, shall break prison and escape, he shall be punished by imprisonment in the state prison for the term of one year, in addition to the unexpired term for which he was originally sentenced.

Id.

§ 17. That if any person who may be imprisoned, pursuant to a sentence of imprisonment in the county jail, or any person who shall be committed for the purpose of detaining him for trial, for any offence not capital, shall break prison and escape, he shall be imprisoned in the county jail for the term of six months.

Id.

§ 18. That if any person who shall be committed to prison for the purpose of detaining him for trial for a capital offence, shall break prison and escape, he shall be imprisoned in the state prison for the term of two years.

Prisoners
removed in
certain
cases.

§ 19. That if any prison or any building near thereto shall be on fire, and the prisoners shall be exposed to danger by such fire, the keeper may remove such prisoners to a place of safety, and there confine them so long as may be necessary to avoid such danger; and such removal and confinement shall not be deemed an escape of such prisoners.

Convict im-
prisoned for
non-pay-
ment of fine,
how liberat-
ed.

§ 20. That when any poor convict shall have been confined in any prison for the space of six months, for the non-payment of fine and costs only, or either of them, the sheriff of the county in which such person shall be imprisoned, shall make a report thereof to any two justices of the peace for such county; if required by such justices, the said keeper shall bring such convict before them, either at the prison or at such other convenient place thereto as they shall direct. The said justices shall proceed to inquire into the truth of said report, and if they shall be satisfied that such report is true, and the convict has not had since his conviction, any estate real or personal, with which he could have paid the sum for the non-payment of which he was committed, they shall make a certificate thereof to the sheriff of the county, and direct him to discharge such convict from prison, and the sheriff shall forthwith discharge him.

AN ACT concerning costs and fees.

§ 1. In all civil cases at law and in equity, unless otherwise provided, the party in whose favor judgment is given shall recover costs, and the supreme, district and justices' courts, respectively, may give or refuse costs at their discretion upon all motions. Prevailing party to recover costs.

§ 2. In all prosecutions in the name of the United States or of an individual, for the breach of any law of this territory, where judgment is rendered against the defendant, such defendant shall be liable for the costs. Defendant when liable for costs.

§ 3. The fees and compensation to the several officers and other persons hereinafter mentioned, shall be as prescribed in the following sections and no more. Fees.

CLERKS' FEES.

§ 4. In the supreme and district courts the clerk's fees shall be as follows: Fees allowed clerk in supreme and district courts.

For docketing a case the first time, nineteen cents.

Each time thereafter, twelve and a half cents.

Entering suit without process, thirty-one cents.

Filing papers, each, six cents.

Entering appearance, twelve and a half cents.

Issuing bail piece when required, twenty-five cents.

Entering special bail, twenty-five cents.

Swearing and empannelling jury, fifty cents.

All entries relative to the trial not otherwise provided for, twenty-five cents.

Swearing each witness on trial, six cents.

Recording verdict, nineteen cents.

Entering judgment, fifty cents.

Attending on striking special jury and delivering copies, fifty cents.

Entering satisfaction on the record, twelve and a half cents.

Entering issue joined, twelve and a half cents.

Taxing costs, thirty-seven and a half cents.

Entering exoneration, twelve and a half cents.

Entering surrender, twelve and a half cents.

Copy of a rule of reference, thirty-one cents.

Signing judgment record, twelve and a half cents.

Issuing a commission to take depositions, thirty-seven and a half cents.

All the motions in any one suit, nineteen cents.

All the rules in any one suit, nineteen cents.

Issuing the venire facias, thirty-seven and a half cents.

All copies when required, for every folio, twelve and a half cents.

Every certificate, twenty-five cents.

Seal, twelve and a half cents.

Every subpoena, nineteen cents.

A search of the records, (suitors and officers of the court excepted) twelve and a half cents.

Taking security upon a writ of error, supersedeas or appeal, nineteen cents.

Assessment of damages on any reference made to him, thirty-seven and a half cents.

A subpoena in chancery, fifty cents.

An order to advertise, thirty-seven and a half cents.

Taking a recognizance, twenty-five cents.

Entering transcript of justice's judgment, twenty-five cents.

Entering an appeal from justice's court, thirty-seven and a half cents.

Certificates of jurors' or constables' attendance at court, (to be paid from the county treasury) each, twelve and half cents.

Calling recognizance and entering forfeiture, nineteen cents.

Respiting or discharging forfeited recognizance and motion thereto, twelve and a half cents.

Entering discharge by proclamation, twelve and a half cents.

Issuing marriage license, seventy-five cents.

FEES IN CRIMINAL CASES.

Issuing process, seventy-five cents.

Entering defendant's appearance, twelve and a half cents.

Entering plea, twelve and a half cents.

Discharging of bail, twenty-five cents.

For other services, the same fees as in civil cases.

Sheriff's
fees.

§ 5. SHERIFFS' FEES.

For the service of any writ and the return thereof, (subpoenas excepted) for one defendant, one dollar.

Each additional defendant, fifty cents.

For serving a declaration where the suit is commenced by declaration, the same fees as for serving a writ.

Every commitment to prison, fifty cents.

Discharging a person from prison, twenty-five cents.

Attending with a person before a judge or court, when required, twenty-five cents.

Attending on a witness, brought before a court or an officer on a writ of habeas corpus or satisfaciendum, fifty cents.

Serving a writ of possession, one dollar.

Serving with the aid of posse comitatis, two dollars and fifty cents.

The copy of any writ or process necessary to complete a record for every one hundred words, twelve and a half cents.

Serving and returning a subpoena for each person named therein and actually summoned, nineteen cents.

Summoning a grand jury in the district court, to be paid from the county treasury, ten dollars.

Making out a list of a struck or special jury, and delivering the same, twenty-five cents.

Summoning and returning a special jury, to be paid by the party putting off or losing the cause, and travelling fees, one dollar.

Travelling fees upon all writs, precepts and subpoenas not herein otherwise provided for, (and not to extend to jurors,) to be computed from the place of service to the place of return, per mile, six cents.

Serving an execution against the body, for every person taken, one dollar.

Collecting and paying into the territorial or county treasury any fine or forfeiture, the same percentage as allowed in civil cases, but the percentage on all executions shall be taken only for the sum received and paid over.

Making and executing a deed for land sold on execution, to be paid by the purchasers or creditor, one dollar.

Serving any person with an order of court, and mileage, and making return, twelve and a half cents.

Bringing up a person on a writ of habeas corpus in civil cases, and mileage, twenty-five cents.

Summoning a jury in cases of forcible entry and detainer, one dollar.

Serving a writ of restitution with the power of the county, two dollars and fifty cents.

Serving a writ without the power of the county, one dollar and fifty cents.

Serving an execution for partition of real estate or assigning dower, and mileage, four dollars.

Each appraiser of real and personal estate, per diem, and mileage, one dollar.

Each bail bond, replevin bond or attachment bond, fifty cents.

Collecting and paying over all sums upon execution, or upon any other writ or process not exceeding three hundred dollars, five per centum; on all sums exceeding three hundred dollars, and not exceeding six hundred dollars, two and a half per centum; and on all sums exceeding six hundred dollars, one and one-fourth per centum; provided that the percentage in no one case shall exceed thirty dollars.

On each action, for opening the court, to be charged once every term, twelve and a half cents.

The appearance of the plaintiff or defendant, to be paid by the party appearing, and taxed in favor of the party recovering, twelve and a half cents.

Returning a writ "not served," for every defendant, six cents.

Actual travelling in such case, for every mile going and returning, six cents.

All copies of summons, when required, for every one hundred words, twelve and a half cents.

Attending on the district court, for himself and deputies, to be paid out of the county treasury, each per day, one dollar and fifty cents.

Attending supreme court, per day, two dollars and fifty cents.

Receiving a prisoner, on surrender by the bail, twenty-five cents.

Taking new bail, and giving a bail piece, fifty cents.

For keeping and providing for a criminal, in jail, committed on any civil process, thirty-seven and a half cents.

For all acts required to be done in justices' courts, the same fees only as are allowed to constables.

§ 6. Fees to be allowed the party recovering judgment, in case an attorney shall have been employed.

For a retaining fee, three dollars and sixty-two and a half cents; but no such fee shall be allowed to the plaintiff's attorney on any suit upon a bond taken on arrest of a defendant, nor to the defendant's attorney upon confessing judgment, when no suit shall have been actually brought.

A term fee, for each term of the court during the progress of a cause, not exceeding three terms in any one cause, sixty-two and a half cents.

Drawing all process and returns, admission of guardians or next friends, recognizances of bail in suits against the bail only, pleadings, adjournments, suggestions, entries, special verdicts, bills of exceptions, demurrers to evidence, and cases, which shall be necessary, and all

Fees allowed prevailing party when attorney employed.

other necessary entries and proceedings in a cause, according to the practice of court, and for which no special provision is herein made, for each folio, twenty-five cents.

For engrossing or copying the same, including all records, writs, returns, pleadings, instruments and all other writings necessary, inserted, for each folio, twelve and a half cents.

For every necessary ordinary motion, sixty-two and a half cents; but not to be allowed upon any confession of judgment, where no suit shall have been actually brought, for any motion except for judgment.

For attending the execution of a writ of inquiry, or the assessment of damage by the clerk, one dollar and fifty cents.

For attending the trial of a cause, one dollar and fifty cents.

Arguing a demurrer, special verdict, bill of exceptions, demurrer to evidence, any enumerated or any matter brought up by writ of error, certiorari, habeas corpus, or a return to a mandamus or prohibition, or attending prepared for such argument only, when pursuant to notice from the adverse party, three dollars and seventy-five cents.

For a brief and the copies thereof, one dollar twelve and a half cents.

Drawing a judgment, seventy-five cents.

Attendance on striking a jury, and on the examination of a witness out of court, fifty cents.

Fees paid to party, and not to attorney.

Such fees to be taxed and recovered for the use and benefit of the party recovering judgment, and not to be paid to the attorney without a written order from such party; *Provided*, The fees shall not, in any one case, exceed sixteen dollars; and in actions on contract, when the amount recovered is less than two hundred dollars, shall not exceed ten dollars.

Fees of supreme court commissioner.

§ 7. FEES OF SUPREME COURT COMMISSIONER.

For taking bail, thirty-seven and a half cents.

Deciding upon an application for the allowance of every writ of error, habeas corpus or certiorari, whether such writ be allowed or not, seventy-five cents.

Admitting any person to prosecute as the next friend of an infant, or to defend as guardian of an infant, twenty-five cents.

Every attendance at chambers upon the hearing of any motion for any order which such officer may have the authority to grant, sixty-two and a half cents.

And the like fee for attendance upon any motion for any official act to be done by such officer, when no fee is specially provided for in such act.

Every order for a commission to examine witnesses, fifty cents.

Attending, settling and certifying interrogatories to be annexed to a commission, one dollar.

Every order for the examination of a witness, conditionally or upon any proceedings to perpetuate his testimony, thirty-seven and a half cents.

Every day's attendance on the examination of such witnesses, two dollars.

Every necessary order in the progress of a cause, except orders to stay proceedings, thirty-seven and a half cents.

Attendance on settling a case or bill of exceptions, one dollar.

Signing a judgment, twenty-five cents.

Taxing a bill of costs, fifty cents.

Taking the acknowledgment of satisfaction of judgment, thirty-seven and a half cents.

For taking a bond, in any case where such bond is required or authorized by law, thirty-seven and a half cents.

For deciding on the sufficiency of sureties, and certifying such sufficiency in cases where it shall appear, fifty cents.

For every precept for a jury, summons for a witness, or attachment against a witness, thirty-seven and a half cents.

For attending to the selection of referees, and certifying their appointment, one dollar.

For every report, and all other papers and proceedings which he may be required by law to prepare in order to be signed by himself, in cases where no specific allowance shall be made for such paper or proceeding, the same fees for drafting and copying as are allowed to attorneys in the supreme court for drafting and copying pleadings therein.

For every order, warrant or attachment, made or issued in any special proceeding authorized by law, thirty-seven and a half cents.

For every notice to any party, officer or person, required to be given, twenty-five cents.

For taking acknowledgment of any instrument, for each acknowledgment, twenty-five cents.

§ 8. FEES OF MASTERS IN CHANCERY.

For signing every summons for a witness, or a party, to attend him, twelve and a half cents.

For attendance at the time and place assigned for hearing, and adjourning the same, at request or upon reasonable cause, one dollar.

Attendance and hearing every argument upon any matter referred to him, litigated, three dollars.

And when he proceeds *ex parte*, one dollar.

Attendance and settling his report after argument, if both parties attend and litigate the same, three dollars.

If he proceeds *ex parte*, one dollar.

Taking an account of what is due on every mortgage, and the security accompanying the same, (if any,) one dollar.

Drawing every report, in pursuance of an order of reference to him, (exclusive of schedules,) for every folio, twenty cents.

Drawing all schedules to be annexed to reports, for every folio, ten cents.

Copies of reports and schedules to be filed, for every folio, ten cents.

Copies of reports and schedules, and all other proceedings furnished by the master to the parties, upon request, for every folio, six cents.

Examining into the circumstances of sureties required in any case, and certifying his opinion to the judge, one dollar.

Appointing any person to appear as next friend for any infant, twenty-five cents.

Inspecting and examining an infant, or infants, who want guardians appointed, inquiring who are willing to become guardians, and into their competency, the proposed security and the competency thereof, and certifying the facts to the judge, three dollars; but when application is made in behalf of several infants, by one petition, no additional charge to be made.

Fees of masters in chancery.

Taking the testimony, and certifying the same and his opinion thereon to the court, in cases of adultery, five dollars.

Making every exhibit produced before him on a reference, with the title of the cause, and signing the same, six cents.

Drawing every advertisement or public notice of the sale of property to be sold by him, fifty cents.

And for every copy of such advertisement, to be printed or posted up, twenty cents.

Attending at the time and place of sale of property by him, and adjourning the sale at the request of the parties, for good cause, by order of the court, one dollar.

Every deed of real estate sold by him under a decree or order, when prepared by him at the request of the parties, five dollars.

Signing and acknowledging a deed for property sold by him, when prepared by another person, seventy-five cents.

Settling the form of a deed to be executed under his direction, by a third person, under a decree or order, one dollar and fifty cents.

Settling the form of an assignment of bonds, mortgages or other securities, to be assigned under a decree or order, one dollar.

Superintending and certifying the payment of money, when paid under his direction, by a decree or order, two dollars; but no fee to be allowed for the payment of money arising from sales to a party in the suit, or into the court.

Taking and reducing to form, in writing, every recognizance entered into before him by order of the court, fifty cents.

Taxing every bill of costs, including the bills of the different officers of the court, and reporting the amount taxed, if upon special motion, fifty cents.

If in a cause before a decree is passed, one dollar.

If after a decree, one dollar and fifty cents.

And when a master is authorized to advertise in newspapers property for sale, or for parties to come before him and prove debts or exhibit claims, he shall be allowed for printer's bills, according to the legal rates of advertising in such papers, which he shall actually pay; and where moneys are ordered to be put out by a master, and where estate is sold by a master under an order or a decree, the master shall be allowed all necessary disbursements actually paid by him, and such allowance, by way of commissions, as the judge may deem reasonable, after notice given to the party to be charged therewith, but not to exceed the sum of twenty dollars.

When a master shall take an account of an estate or administration thereof, or an account between parties in trade, or shall take any other account under a decree or order not included in the foregoing provisions, or when extra services shall be rendered by any master in taking or stating an account, the judge may make a further allowance beyond the fees herein specified, as under the circumstances may be just and reasonable, upon notice to the party to be charged therewith.

§ 9. FEES OF SOLICITORS IN CHANCERY.

Drawing every bill, answer or other pleading or proceeding in a cause, for every folio, twenty-eight cents.

For every engrossment of such drafts to file, for every folio, fourteen cents.

For every other necessary copy, seven cents.

Attending the judge out of term, upon petition or upon any special motion, one dollar.

Attending the court of chancery in term, upon a special motion founded on previous notice, one dollar.

And if such motion be argued or opposed, one dollar and fifty cents.

Serving every rule or order or copy of interrogatories, twenty-five cents.

Serving a subpoena to appear and answer on an injunction, seventy-five cents.

Every necessary notice or summons actually served, including a copy thereof and service, thirty-seven and a half cents.

Drawing instructions for the examination of each witness, twenty-five cents.

Drawing brief for counsel, on any special motion or petition of which notice shall have been given, one dollar.

Drawing brief for counsel, upon the hearing of a cause before the court, when there has been an answer, plea or demurrer to the bill, or before a master on a reference to take and state an account, two dollars.

Drawing charges or discharges before a master, for each folio, twenty-two cents.

Attending a master upon any matter referred to him, not herein otherwise provided for, if argued, one dollar.

If not argued, fifty cents.

Attending a master upon a summons or upon the taxation of costs, fifty cents.

Copy of a bill of costs delivered with notice of taxation, or filed after taxation, if before a decree, fifty cents.

If after a decree, one dollar: *Provided*, That the costs in each case shall not exceed twenty dollars.

§ 10. FEES OF CORONERS AND JURORS ON INQUEST.

For the view of each body and for taking and returning the inquisition, three dollars.

Every subpoena and warrant, twenty-five cents.

Travelling each mile to and from the place of view, six cents.

Issuing venire, twenty-five cents.

Swearing each witness, not to exceed in any one case thirty-seven and a half cents, six cents.

Taking recognizance, twenty-five cents.

The fees of the coroner and constable for taking inquest shall be paid out of the county treasury, and in other cases the coroner shall receive the same fees as are allowed to the sheriff in similar cases.

To every juror summoned on an inquest by the coroner of any county, one dollar per diem, for attendance on such inquest, and six cents per mile for travelling to and from his place of residence, to be paid out of the county treasury upon the certificate of the coroner, and allowance of the county commissioners.

§ 11. FEES OF JUSTICES OF THE PEACE.

For a summons, warrant or subpoena, twenty-five cents:

For a venire, twenty-five cents.

Swearing a jury, twenty five cents.

Fees of coroners and jurors on inquest, how paid.

Fees of Justices of the peace.

Taking and certifying the acknowledgement to a deed, for each grantor named therein, twenty-five cents.

For administering any oath, six cents.

For certifying the same when administered out of court, six cents.

For entering a judgment, twenty-five cents.

For an attachment or execution, twenty-five cents.

Every adjournment, twelve and a half cents.

For every bond or other written security directed by law, to be taken or drafted by the justice, twenty-five cents.

Copy of the proceedings in any case when demanded, per folio, twelve and a half cents.

Taking an examination, deposition or confession, per folio, twelve and a half cents.

Entering amicable suit, twenty-five cents.

For a transcript of judgment, twenty-five cents.

Opening judgment after default, twelve and a half cents.

For filing every paper required to be filed with him, except written declarations, pleas or other written pleadings, or any process issued in any cause, six cents.

Taxing costs, twelve and a half cents.

Marrying and making return thereof, one dollar; and such sum as may be allowed by the party making the application.

For holding an inquisition in cases of forcible entry and detainer, in addition to other fees, one dollar.

Writ of restitution, including execution for costs, thirty-seven and a half cents.

FEEES OF JUSTICES OF THE PEACE. (IN CRIMINAL CASES.)

For a warrant, twenty-five cents.

Taking a recognizance, twenty-five cents.

Commitment to jail, twenty-five cents.

A search warrant, thirty-seven and a half cents.

Entering judgment for fine or punishment, twenty-five cents.

Order of discharge to the jailer, twenty-five cents.

And in all cases mileage (circular,) 6 cents.

Discharging a prisoner, twelve and a half cents.

Warrant for punishment, nineteen cents.

For other services, the same fees as in civil cases.

§ 12. FEES OF DISTRICT ATTORNEYS.

Fees of district attorney.

For drawing every indictment actually agreed to by a grand jury, including such as may be prepared by their direction, though not finally agreed to by them, for each folio, twenty-two cents.

Engrossing, per folio, fifteen cents.

The like fees for drawing and engrossing every affidavit and other proceeding, actually and necessarily prepared by him in the prosecution of any cause, and for which no fee is specially allowed.

Every bench warrant or other process, actually and necessarily issued to bring a party into court, twenty-five cents; but no allowance made for more than one warrant on any indictment where the defendants reside in the same county, nor for a second warrant on the same indictment, unless a previous warrant shall have been duly returned, "not served," after a reasonable time shall have been allowed for the service thereof.

Every subpoena actually issued, whether returnable before a grand jury or before the court, twenty-five cents; but no allowance made for more than one subpoena for each witness.

Calling, examining the witnesses and arguing as to the sentence when the defendant shall plead guilty, one dollar and twenty-five cents.

Arguing every special motion, actually made after notice actually be given, one dollar and twenty-five cents.

Every trial, four dollars.

And the like fee for arguing every motion for a new trial, or demurrer, or motion in arrest of judgment, or bill of exceptions, or writ of error.

Making up a record when required by order of a judge of the court in which the defendant is convicted, for drawing each folio, twenty-two cents.

For engrossing, per folio, fifteen cents.

And the like compensation when making up such record at the instance of a defendant, and [to] be paid by such defendant.

Mileage in going and returning from the court, to be charged once only for each court on each prosecution, each way per mile, ten cents.

The account of a district attorney when presented to the taxing officer, shall be accompanied by an affidavit, stating that all the services therein charged have been actually performed, that the subpoena and bench warrants charged in such account have been actually issued, that such subpoena and such warrants, according to the best of the knowledge and belief of such district attorney, were necessary, and that the several folios charged in the account for the drawing or engrossing of any indictment, plea, record, or other proceeding, are correct.

§ 13. FEES OF CONSTABLES.

For serving a warrant or other writ, not herein provided for, on each person therein named, twenty-five cents. Fees of constables.

For a copy of every summons delivered on request or left at the place of abode of defendant, twelve and a half cents.

Travelling for the service of process, going and returning, per mile, six cents.

Serving a subpoena or summons on each person named therein, and mileage, twelve and a half cents.

Serving an attachment, and mileage, fifty cents.

Posting up copy of attachment, for each copy, and mileage, twenty-five cents.

Committing to prison, and mileage, thirty-seven and a half cents.

Summoning a jury, fifty cents.

Attending upon a jury, twenty-five cents.

On all sums made on execution and paid over and charged upon the defendant, five per cent.

Attending the district court when thereunto warned, to be paid out of the territorial treasury, each day, one dollar.

The services herein required to be performed by the constable when done by the sheriff, the same fees that are allowed to the constable shall be allowed to the sheriff, and no more.

For notifying a plaintiff of a service of a warrant, and mileage, twelve and a half cents.

Fees of witnesses.

§ 14. FEES OF WITNESSES.

For each witness, for every day's attendance, fifty cents.

Attendance before a justice of the peace, for every half day, twenty-five cents.

And for travelling, each mile, coming only from his or her place of residence to the place of trial, six cents; but the attendance of only two witnesses to each particular fact shall be taxed in the bill of costs, and if any witness shall attend upon two or more cases on the same day, before the same court of justice, his fees shall be equally proportioned among the parties who shall summon him.

Fees of registers of deeds.

§ 15. FEES OF REGISTERS OF DEEDS.

For recording every deed, mortgage or other paper, per folio, twelve and a half cents.

When any instrument is in any other than the English language, in addition per folio, six and a quarter cents.

Translation of every deed or other paper, per folio, twelve and a half cents.

Searching the record, twelve and a half cents.

Copies of any papers when required, per folio, six and a quarter cents.

Certificate, twenty-five cents.

Fees of notaries public.

§ 16. FEES OF NOTARIES PUBLIC.

For every protest of a bill of exchange or promissory note, registering seal and other service, one dollar.

Attesting letters of attorney and seal, fifty cents.

Notarial affidavit to an account under seal, twenty-five cents.

Registering protest of a bill of exchange or promissory note for non-acceptance or non-payment, seventy-five cents.

Noting a bill of exchange, note or other thing properly protested either for non-acceptance or non-payment, fifty cents.

Drawing and taking the proof of acknowledgment of a bill of sale, bottomry, mortgage, hypothecation of a vessel or charter party, one dollar and fifty cents.

Certifying power of attorney for transferring and selling stock or other securities, thirty-seven and a half cents.

Each oath or affirmation, twelve and a half cents.

Being present at demand, tender or deposit, and noting the same, seventy-five cents.

Every certificate with seal annexed, fifty cents.

Fees of judges of probate.

§ 17. FEES OF JUDGES OF PROBATE.

For granting letters of administration when there is no litigation, seventy-five cents.

When contested, one dollar and seventy-five cents.

Decree for the probate of a will when not contested, seventy-five cents.

The same when contested, one dollar and seventy-five cents.

Decree for settling an estate of an intestate, seventy-five cents.

Partition of real estate, seventy-five cents.

Order of distribution, seventy-five cents.

Examining and allowing an inventory, for the first page, twenty-five cents.

For each additional page, twelve and a half cents.

Administering an oath, twelve and a half cents.

Examining and allowing accounts of executors or administrators, not exceeding one page, fifty cents.

For each additional page of the same, twelve and a half cents.

A citation, summons or process, twenty-five cents.

A quietus, fifty cents.

Warrant to appraise or divide estates, thirty-seven and a half cents.

Issuing commission to receive and examine claims of creditors, when an estate is represented to be insolvent, fifty cents.

Granting an appeal, fifty cents.

Approving securities of an executor or administrator, twenty-five cents.

Assignment of a dower in real estate, twenty-five cents.

Assignment of personal estate to widows, thirty-seven and a half cents.

Appointment of trustees on partition of real estate, twenty-five cents.

Order for sale of personal estate, twenty-five cents.

Extending letters of administration, fifty cents.

Granting a reference of executors' or administrators' account, or allowing report thereon, fifty cents.

Disallowing application for letters of administration or probate of will, to be taxed against the party failing to sustain the application, fifty cents.

Every continuance, twelve and a half cents.

For the bonds upon letters of administration or the appointment of a guardian, fifty cents.

Probate of will and letters testamentary thereon, or letters of administration, fifty cents.

Seal for the same, twenty-five cents.

Drawing a decree respecting the probate of a will or codicil, fifty cents.

Bond for the execution, fifty cents.

A warrant to divide an intestate estate among the heirs, a warrant to set off the widow's dower, or a warrant to receive and examine the claims of an insolvent estate, thirty-seven and a half cents.

Drawing a decree on the settlement or partition of an estate, fifty cents.

A citation or summons for the first person named therein, twenty-five cents.

Each other person named therein, twelve and a half cents.

Drawing an order of distribution, thirty-seven and a half cents.

Entering and filing a caveat, twelve and a half cents.

Proportioning an insolvent estate among the creditors, seventy-five cents.

Filing an inventory, twelve and a half cents.

Entering the account of an executor, administrator or guardian, for every folio, twelve and a half cents.

Entering an oath of executor or administrator, twelve and a half cents.

Searching the records, twelve and a half cents.

Copies of papers when required, for every folio, twelve and a half cents.

Sold, twenty-five cents.

Recording wills, codicils and the proof thereof, letters of administration, of guardianship, deeds and other matters, for every folio, twelve and a half cents.

And when any will, deed, or other matter is in any other than the English language, then for every sheet containing one hundred words, in addition, six cents.

And when a translation of any such will, deed or other writing is required, he shall be entitled to receive for every folio, twenty-five cents.

Appeal bond, fifty cents ; but no fee shall be demanded for taking from the files in his office, or transferring to the place of the sitting of the probate court, such papers as are necessary in the settlement of any estate or account in the said court ; and no fee shall be taken in any case where it shall appear, by the oath or affirmation of any person applying for letters testamentary or of administration, that the goods, chattels and credits of the testator or intestate do not exceed the value of forty dollars.

No fees allowed unless estate exceeds \$40 in value.

When a fee is allowed to one officer, the same fee shall be allowed to other officers for the performance of the same service, when such others are by law authorized to perform the same.

Fees of commissioners appointed by the judge of probate :

Fees of commissioners appointed by judge of probate.

Commissioners to appraise the estate of a deceased person, per day, one dollar.

Commissioners to examine claims against any estate, per day, one dollar and fifty cents.

Commissioners to make division of personal estate among heirs or devisees, per day, one dollar.

Trustees on partition of real estate, or assignment of dower, not exceeding, per day, two dollars.

And the same mileage for each commissioner in all cases as is allowed constables in serving of process.

Selling mortgaged premises.

§ 18. Sale of mortgaged premises by advertisement :

For drawing and copies of the advertisement of foreclosure and sale, and affidavits of the publication and sale, for every folio twenty-five cents.

For superintending the sale and attending the execution of the necessary papers, seven dollars and fifty cents.

Posting such advertisement, for each copy, one dollar.

Serving copy on the person in possession, one dollar.

Publishing notices in newspapers.

§ 19. Fees for publishing in newspapers legal notices and advertisements :

For publishing any notice of an insolvent debtor for six weeks, one dollar and sixty-seven cents.

If published ten weeks, two dollars.

For publishing any other notice, or any other citation, summons, or any other proceeding or advertisement, required by law to be published in a newspaper, for the first insertion, per folio, fifty cents.

For each subsequent insertion, per folio, twenty cents.

Notice, how published when printers refuse.

§ 20. If all the printers and proprietors of newspapers in any county in which any notices, order, citation or other proceeding, or advertisement, is by law required to be published, shall refuse to insert the same for the price herein specified, then it shall be lawful to publish the same in the nearest newspaper to the place where the

proceeding is to be had, instead of a newspaper printed in such county, if the printer will consent to publish the same for the price herein specified.

§ 21. If no printer will consent to publish such notice or advertisement for the said prices, on proof by affidavit of the party applying to such printer, the law requiring such publication in any particular county or place shall not take effect or be in force in respect to such notice or advertisement.

Law not to take effect in certain cases.

§ 22. When notice of a sale of mortgaged premises shall be published in any other than the county in which the premises are situated, a copy of such notice shall be served on the person in possession thereof, if the same are occupied, at least four weeks before the time of such sale, and proof of the service of such notice may be made, certified and recorded in the same manner, and with like effect, as proof of the publication of such notice.

Notice of sale of mortgaged premises, how served.

§ 23. Every grand and petit juror shall be allowed one dollar per day for his attendance at court as such juror, and six cents mileage for every mile travelled from his residence to court, to be paid from the county treasury, and each juror, before a justice of the peace, shall be entitled to fifty cents for each case tried. Upon the trial of each cause in the district court, the clerk shall demand of the party in whose favor verdict shall be given, twenty-five cents for each juror, which shall be paid by him before the verdict is declared, and said clerk shall pay the same into the county treasury.

Fees of jurors.

Prevailing party to advance fee.

§ 24. All fees shall be paid by the party requiring the services, on the same being rendered, and a bill of particulars presented and taxed if required.

Fees, by whom paid.

§ 25. In all cases where an officer in the execution of his office, shall be required to write or set up an advertisement, such officer shall be allowed therefor (if not otherwise provided for) twenty-five cents each, and if any advertisement is required to be published in a newspaper, the money therefor shall be paid by the party and taxed in the bill of costs.

Fee for writing advertisement.

§ 26. For all services required to be performed by law and not herein enumerated, the officer performing the same shall be allowed such reasonable fees as the supreme or district court may tax therefor.

Fees not specified.

§ 27. When any prosecution, instituted in the name of the United States for breaking any law of this territory, shall fail, or where the defendant shall prove insolvent, or escape, or be unable to pay the fees when convicted, the fees shall be paid out of the county treasury, unless otherwise ordered by the court: *Provided*, That no fees shall be paid out of the county treasury for mileage to the district attorney.

In criminal suits, fees how paid.

§ 28. Every officer, whose fees are herein before ascertained, limited and appointed, shall publish and set up in his office fair tables of his fees, according to this act, within six months after the passage thereof, in some conspicuous place, for the inspection of all persons who have business in such office, upon pain of forfeiting for each day the same shall not be put up through such officer's neglect, a sum not exceeding two dollars, which may be recovered by action of debt in the name of any person before any justice of the peace of the same county.

Officers to set up table of fees in their offices.

Taking greater fees than allowed by law.

§ 29. No officer or other person to whom any fees or compensation shall be allowed by law for any service, shall tax or receive any other or greater fee or reward for such service but such as is allowed by law. A violation of this section shall be deemed a misdemeanor, and the person guilty thereof shall be liable to the party aggrieved for twice the damages sustained by him.

Clerk's and sheriff's fees not to exceed certain sum.

§ 30. In cases where there is a confession of judgment, or where the cause is settled by the parties, the whole fees of the clerk, after the return of the writ, shall not exceed one dollar and fifty cents, and the whole fees of the sheriff (except his fees for the service of subpoena) after the return of the writ, shall not exceed fifty cents.

Records may be inspected.

§ 31. Every person of this territory shall have free access to all public records, without being taxed any fee therefor.

Fees for recording deeds, &c.

§ 32. Hereafter the fees for recording any deed, mortgage or other instrument, required to be recorded, shall be paid at the time of presentment for record, if required by the register.

When prosecutor to pay costs.

§ 33. When any prosecution, instituted in the name of the United States, shall fail, the judge shall determine from the circumstances of the case whether the prosecutor or the county shall pay the costs.

Term "folio"

§ 34. Whenever the term "folio" is used in this act, it shall be construed to mean one hundred words, counting every figure necessarily used as a word.

Allowance for one draft only.

§ 35. Whenever an allowance is made for drafting any process, pleading or proceeding, it shall be made for only one draft of the same process, pleading or proceeding, notwithstanding several may have been issued or used.

What part of process not computed.

§ 36. No record, writ, return, pleading, instrument or other writing, copied into any pleading, proceeding, entry, process or suggestion, shall be computed as any part of the draft of such pleading or other proceeding.

Fees for copies of depositions.

§ 37. The legal fees paid for certified copies of the depositions of witnesses filed in any clerk's office, and of any documents or papers recorded or filed in any public office, necessary on the trial of a cause, or on the assessment of damages, shall be allowed in the taxation of costs.

Attorney not allowed fee.

§ 38. No counsel or attorney in any cause shall be allowed any fee for attending as a witness in such cause.

Oath of office.

§ 39. Every officer authorized to administer oaths, shall administer the oath of office to any person who wishes to qualify for any public office, without fee.

Fees, how allowed and taxed.

§ 40. Upon the settlement of an execution by a defendant, or upon settling any suit or demand, the sheriff or attorney or clerk claiming any fees which shall not have been taxed, shall upon being required by the defendant, and on his paying the expense thereof, have his fees taxed by some officer authorized by law to tax the same.

When not collectable.

§ 41. No sheriff, attorney or clerk shall collect any fees, after having been required as aforesaid to have the same taxed, without such taxation having been made.

Who to tax cost.

§ 42. Judges of the district [court] and supreme court commissioners are authorized to tax costs in cases at law, and judges and masters in chancery, in cases in equity.

How to be taxed.

§ 43. Every officer authorized to tax costs in any court of law or equity or for services rendered in any proceeding authorized by law,

shall examine the bills presented to him for taxation, whether such taxation be opposed or not, and shall be satisfied that the items charged in such bill are correct and legal, he shall strike out all charges for services which in his judgment were not necessary to be performed, and for all folios in pleadings, entries or proceedings which were unnecessarily inserted, and he shall strike out the charges for more than two counts for the same cause of action in any declaration, and the charges for more than two pleas of the same matter of defence in any plea.

§ 44. When there shall be charges in a bill for the attendance of any witness, or for copies or exemplifications of documents or papers, or for any other disbursements except to officers for services rendered, such charges for witnesses shall not be taxed without an affidavit, stating the distance they respectively travelled, and the days they actually attended; and such charges for copies shall not be taxed without an affidavit that such copies were actually and necessarily used, or were necessarily obtained for use, nor shall such disbursements be allowed without an affidavit, specifying the items thereof particularly, nor unless they appear to have been necessary and reasonable in amount. How to be taxed.

§ 45. No amount of costs shall be put into a judgment record, or collected on execution, until the same shall have been taxed by some proper officer. Costs not put into record.

§ 46. When any person shall attend a court of record as a witness in behalf of the territory, upon the request of the public prosecutor, or upon a subpoena, or by virtue of a recognizance for that purpose, and it shall appear that such person has come from any state or other territory of the United States, or from any foreign country, or that such person is poor, the court may by order of [on] its minutes direct the county treasurer of the county in which the court shall be sitting, to pay to such witness such sum of money as shall seem reasonable for his expenses. Expenses of witnesses allowed.

§ 47. The clerk of the court, by which such order shall be made, shall immediately make out and deliver a certified copy thereof to the person in whose favor the same is made, without exacting any fee for such service. Clerk to give copy of order.

§ 48. Upon the production of such certified copy to the county treasurer, or as soon thereafter as he shall have sufficient moneys in his hands, he shall pay to the person authorized to receive the same, or to the order of such person, the sum of money so directed to be paid, which shall be allowed to him in his accounts. County treasurer to pay order.

§ 49. In the following cases, if the plaintiff shall recover judgment by default, upon confession, verdict, demurrer, or otherwise, in any action or proceeding at law, he shall recover the costs allowed by law: When plaintiff to recover costs.

1. In all actions relating to real estate;
2. In all actions in which the title to lands or tenements, or a right of way, or a right by prescription, or otherwise, to any easement in lands, or to overflow the same, or to do any other injury thereto, shall have been put in issue by the pleadings, or shall have come in question on the trial of the cause;

3. In suits and proceedings upon writs of scire facias, mandamus, audita querela, or prohibition or information in the nature of quo warranto.

To recover
no more
costs than
damages.

§ 50. If the plaintiff, in an action for assault and battery, or false imprisonment, or for slanderous words, or for libel brought in the district court, recover fifty dollars or less, such plaintiff shall recover no more costs than damages, unless the jury find in favor of the plaintiff for full costs.

When not to
recover
costs.

§ 51. If the plaintiff, in an action of replevin brought in the district court, recover damages to the amount of fifty dollars or less, he shall recover no costs, unless it shall appear by the appraisal of the property replevied, that such property was worth more than fifty dollars.

1b.

§ 52. In all actions brought in the district court, except those enumerated in the preceding forty-ninth section, and except actions of assault and battery, for false imprisonment, for slanderous words, or for libels and actions of replevin, if the plaintiff do not recover more than fifty dollars, he shall not recover any costs, unless the amount of his claim shall have been reduced by a set-off of the defendant, as specified in the next section.

When to
have costs,
if any dam-
ages.

§ 53. Where the plaintiff shall recover any sum in any court of record, he shall recover costs, if it appear that his claims, as established at the trial, exceeded two hundred dollars, and the same was reduced by set-offs; or that the debts, demands and accounts of both parties, established on the trial, exceeded four hundred dollars.

When several
suits
brought on
one bond,
&c.

§ 54. When several suits shall have been brought on one bond, recognizance, promissory note, bill of exchange or other instrument, and where several suits shall be brought against the maker and endorsers of a note, or against the drawers, acceptors or endorsers of a bill of exchange, there shall be collected or received from the defendant, the costs taxed in one suit only, at the election of the plaintiff: and in the other suits, the actual disbursements only of the plaintiff, shall be collected or received from the defendant.

When de-
fendant to
have costs.

§ 55. In all actions and proceedings in which the plaintiff would be entitled to costs, upon a judgment rendered in his favor, if after the appearance of the defendant such plaintiff be nonsuited, discontinue his suit, be non-prossed, or judgment passed against him on verdict, demurrer, or otherwise; or in case a plaintiff recovers judgment, but not a sufficient sum to entitle him to any costs, the defendant shall have judgment to recover against such plaintiff full costs, which shall have the like effect as all other judgments.

Def't not to
recover
costs against
executors,
&c.

§ 56. But the last section shall not extend to give a defendant costs against executors or administrators, necessarily prosecuting in the right of their testator or intestate, unless upon special application the court shall award costs against them for wantonly bringing any suit, for unnecessarily suffering a nonsuit or [non-] pros, or for bad faith in bringing or conducting the cause.

When one
of several
def'ts ac-
quitted.

§ 57. When several persons are made defendants in any writ or proceeding, or in any action in which the plaintiff upon a recovery would be entitled to costs, and one or more of them shall be acquitted by verdict on the trial, or by judgment upon plea in abatement, or [on] demurrer, or by the plaintiff discontinuing, as to such defendant every person so acquitted, shall recover his costs of suit in like manner as if judgment had been rendered in favor of all the defendants.

When plain-
tiff not to
have costs.

§ 58. When any suit, upon any contract, except against executors or administrators, is settled before judgment, and the sum, actu-

ally due and admitted, does not exceed the sum which, upon a recovery, would entitle the plaintiff to costs, no costs shall be demanded or received.

§ 59. When there shall be several issues joined in any cause, and a verdict shall be rendered for the plaintiff, on one or more of them, and for the defendant, on another; if the plaintiff obtain judgment upon the whole record, costs shall be rendered as follows : Costs when verdict for plaintiff on part of several issues.

1. When the substantial cause of action was the same in each issue, the plaintiff shall receive the costs on those issues which were found for him, and shall not be liable to the defendant for the costs of the issue which shall have been found for such defendant.

2. Where there are two or more distinct causes of action in separate counts, the plaintiff shall recover costs on those issues, which are found for him, and the defendant on those which are found in his favor.

§ 60. When judgment shall be rendered for a defendant in a plea of misnomer in abatement, no costs shall be allowed to either party. No costs to either party.

§ 61. When a suit shall be commenced in any court,

1. For a plaintiff not residing within the jurisdiction of such court; or for several plaintiffs who are all non-residents; or, When plaintiff to file security for costs.

2. For or in the name of the trustees or assignees of any debtor; or,

3. For or in the name of any person committed in execution for crime; or,

4. In the name of any infant whose next friend has not given security for costs,

The defendant may require such plaintiff to file security for the payment of the costs that may be incurred by the defendant in such suit or proceeding.

§ 62. If, after the commencement of a suit, the plaintiff shall become a non-resident, or all the plaintiffs shall become non-residents, or be sentenced to state prison for any term less than for life, the defendant may also require such security to be filed.

§ 63. The order shall be to file such security, and that all proceedings on the part of the plaintiff be stayed until such security be filed, as hereinafter provided, and may be made by any judge or supreme court commissioner, upon due proof by affidavit of the facts entitling such defendant thereto. Proceedings when stayed.

§ 64. Such security shall be given in the form of a bond in a penalty of at least two hundred and fifty dollars, with one or more sufficient sureties, who shall swear that they are each worth the amount stated in the bond, over and above all debts, to the defendant, conditioned to pay on demand all costs that may be awarded to the defendant in such suit. Mode of giving security.

§ 65. It shall be filed with the clerk of the court, and notice thereof be given to the defendant or his attorney, within twenty days after such notice of the order to stay proceedings.

§ 66. In the cases of [in] which according to the provisions of this act, a defendant at the commencement of a suit shall be entitled to require security for costs, the attorney for the plaintiff shall be liable for such costs to an amount not exceeding one hundred dollars, until security therefor be filed as herein provided, whether such security shall have been required by the defendant or not. Attorney when liable.

How relieved from liability.

§ 67. Such attorney may relieve himself from such liability, by filing security as herein provided, without being required to do so by the defendant, and by giving notice thereof to such defendant or his attorney.

When plaintiff appealing not to recover costs.

§ 68. In all civil actions tried before a justice of the peace, if the plaintiff shall appeal from a judgment in his favor, and shall not recover in a district court a greater sum for debt or damages than he recovered by the first judgment, he shall not be entitled to costs.

Interest not part of last judgment.

§ 69. In comparing the sums recovered by the two judgments for the purposes specified in this act, the sum, if any, allowed for interest accrued on the plaintiff's demand, after the first verdict or judgment, shall not be included, and he shall not be considered as having recovered more on the appeal than on the first trial, merely on account of the addition of interest accrued between the two trials.

When money brought into court by defendant.

§ 70. When a defendant shall bring money into court, and offer the same in satisfaction of the damages demanded by the plaintiff, the plaintiff shall in all cases be entitled to the costs which had previously accrued, though he may not recover a larger sum of damages than is so brought into court.

Notice of taxing to be given.

§ 71. No costs shall be taxed without sufficient notice being given to the adverse party or his attorney, of the time and place of such taxation.

AN ACT to repeal certain acts therein named.

Acts repealed.

§ 1. That the following acts are hereby repealed, viz :

"An act to amend an act entitled 'An act concerning the supreme and district courts, and defining their jurisdiction and powers :'" Approved January 19, 1838.

"An act to amend an act concerning judgments and executions :'" Approved January 19, 1838.

Act to take effect.

§ 2. This act shall take effect on the first day of March next.

AN ACT to repeal the acts therein mentioned.

Acts of Michigan territory repealed.

§ 1. All the acts of the territory of Michigan which were in force in the territory of Wisconsin on the fourth day of July, in the year one thousand eight hundred and thirty-six, are hereby repealed.

Repeal not to revive former act.

§ 2. The repeal of any act, by any law of this territory, shall never be construed to revive any act previously in force, unless such repealing act shall contain an express provision that any such repealed act, shall be thereby revived and put in force.

Certain acts of legislative assembly of Wisconsin repealed.

§ 3. The following acts passed by the legislative assembly of Wisconsin, are hereby repealed, to wit :

"An act to amend an act entitled 'An act to provide for the appointment of sheriffs, and to define their duties and powers,' passed by the legislative council of the territory of Michigan on the 23d day of April, A. D. 1833 :'" Approved November 17th, 1836.

"An act prescribing the duties of coroners :'" Approved November 29th, 1836.

"An act to authorize the judges of the supreme court to appoint clerks to the several courts of their respective districts in the first instance :'" Approved November 17th, 1836.

"An act to provide for the collection of demands growing out of contracts for sales of improvement on public lands:" Approved December 3d, 1836.

"An act concerning the supreme and district courts, and defining their jurisdiction and powers:" Approved December 8th, 1836.

"An act to incorporate the inhabitants of such towns as wish to be incorporated:" Approved December 6th, 1836.

"An act in relation to the evidences of titles to lands in the territory of Wisconsin:" Approved December 9th, 1836.

"An act to provide for the admission of attorneys and counsellors at law:" Approved December 6th, 1836.

"An act to prevent trespass on school lands:" Approved December 9th, 1836.

"An act fixing the time for the annual meeting of the legislative assembly:" Approved December 8th, 1836.

"An act to amend and adopt the several laws of this territory for the judicial tribunals, for the purpose of giving said laws full force and effect, according to the provisions thereof:" Approved December 8th, 1836.

"An act to amend an act entitled 'An act to provide for the assessment and collection of territorial taxes:':" Approved December 9th, 1836.

"An act to enforce the payment of certain moneys into the several county treasuries:" Approved December 13th, 1837.

"An act to provide for the election of county treasurers, and to define their duties:" Approved December 20th, 1837.

"An act organizing a board of commissioners in each county in this territory:" Approved December 20th, 1837.

"An act to prevent forcible entry and detainer:" Approved December 26th, 1837.

"An act concerning town and county officers in the several counties of Brown, Milwaukee and Racine, and the counties attached to them for judicial purposes:" Approved January 3rd, 1838.

"An act for the relief of the poor:" Approved January 3rd, 1838.

"An act to authorize the several counties in this territory to hold and convey real estate, to sue and be sued, and for other purposes:" Approved January 8th, 1838.

"An act to abolish imprisonment for debt, and for other purposes:" Approved January 12th, 1838.

"An act to authorize the boards of county commissioners of the several counties in this territory to borrow money for the purpose of erecting court-houses and jails:" Approved January 15th, 1838.

"An act relative to limited partnerships:" Approved January 15th, 1838.

"An act to provide for the collection of demands against boats and vessels:" Approved January 15th, 1838.

"An act concerning debtors and their securities:" Approved January 12th, 1838.

"An act to establish and regulate ferries in the county of Milwaukee, and the counties thereto attached for judicial purposes:" Approved January 16th, 1838.

"An act for opening and repairing, or vacating public roads and highways:" Approved January 15th, 1838.

"An act relating to the militia and public defence of the territory of Wisconsin:" Approved January 17th, 1838.

"An act to provide for the appointing of justices of the peace, to prescribe their powers and duties, and to regulate their proceedings:" Approved January 17th, 1838.

"An act to regulate and define the duties of the county officers in this territory:" Approved January 17th, 1838.

"An act to prevent and punish gambling:" Approved January 18th, 1838.

"An act for assessing and collecting county revenue:" Approved January 18th, 1838.

"An act to provide for and regulate general elections in this territory:" Approved January 18th, 1838.

"An act providing for the recording of town plats:" Approved January 18th, 1838.

"An act concerning grand and petit jurors:" Approved January 19th, 1838.

"An act to regulate ferries:" Approved January 18th, 1838.

"An act for the punishment of the crime of bribery:" Approved January 18th, 1838.

"An act to amend an act entitled 'An act concerning the supreme and district courts, and defining their jurisdiction and powers:'" Approved January 19th, 1838.

"An act relating to estrays:" Approved January 19th, 1838.

"An act concerning costs and fees," and "An act supplementary thereto:" Both approved January 19th, 1838.

"An act to authorize the appointment of public administrators in the several counties of this territory, and to prescribe their duties:" Approved January 19th, 1838.

"An act to prevent disasters on steam-boats navigating the waters within the jurisdiction of Wisconsin territory:" Approved January 19th, 1838.

"An act to authorize evidence by the oath of parties:" Approved January 19th, 1838.

"An act to provide for a territorial revenue:" Approved January 19th, 1838.

"An act supplementary to an act entitled 'An act to regulate the mode of petitioning the legislative council in certain cases:'" Approved January 19th, 1838.

"An act to prevent trespass and other injuries being done to the possessions of settlers on the public domain, and to define the extent of the right of possession on the said lands:" Approved January 19th, 1838.

"An act to provide for taking the official bonds of auctioneers, and for other purposes:" Approved June 22d, 1838.

"An act to district the territory of Wisconsin into electoral districts, and to apportion the representation of each:" Approved June 23d, 1838.

"An act to amend an act regulating marriages:" Approved April 23d, 1838.

An act without any title, providing that justice's acts shall not be invalid from giving his bond irregularly: Approved June 23d, 1838.

§ 4. The repeal of any statutory provisions by this act, shall not affect any act done or right accrued or established, or any proceeding, suit or prosecution had or commenced, previous to the time when such repeal shall take effect; but every such right, act and proceeding, shall remain as valid and effectual as if the provisions so repealed had remained in full force.

Saving of rights under former act.

§ 5. No offence committed, and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, shall be affected by such repeal, except that when any punishment, forfeiture or penalty, shall have been mitigated by the laws to be in force after such repeal, such provision shall apply to and control any judgment to be pronounced after the repeal, for any offence committed before that time.

Penal and criminal liabilities to remain unaffected.

§ 6. No prosecution for any offence, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, shall be affected by such repeal; but the same shall proceed as if any such provision had not been repealed, except that such proceedings shall be conducted according to the provisions of the law in force at and after the time of such repeal.

Repeal not to affect pending prosecution. &c.

§ 7. The repeal of the laws of Michigan, as contemplated in the first section of this act, shall not extend to any law private in its nature, nor to any act conferring rights, privileges or immunities, upon any individual or association of individuals, or conferring corporate powers upon any county, town, society or individuals.

Not to affect private or corporate rights.

§ 8. None of the statutes of Great Britain shall be considered as law of this territory; nor shall they be deemed to have had any force or effect in this territory since the fourth day of July, 1816.

Statutes of Great Britain not to have effect.

§ 9. This act shall take effect on the fourth day of July next; but if any of the laws passed at the last November, or the present session of the legislative assembly, shall take effect at an earlier day, then all provisions of any of the laws hereby repealed, contravening the provisions of such laws, or any of them, shall be deemed to be repealed at the time or times when such laws, or any of them, shall take effect.

Act to take effect.

§ 10. All persons who, at the time when this act shall take effect, shall hold any office under any of the acts hereby repealed, shall continue to hold the same according to the tenure thereof, except those offices which have been abolished, and those as to which a different provision shall have been made by the laws enacted at the last November, or the present session of the legislative assembly.

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